

ORIGINAL

December 17, 1998

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[DOCKET NO. 98-30]

SERVICE CONTRACTS SUBJECT TO THE SHIPPING ACT OF 1984

AGENCY: Federal Maritime Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") proposes to revise its regulations governing service contracts between shippers and ocean common carriers to reflect changes made to the Shipping Act of 1984 ("1984 Act") by P.L. 105-258 (the Ocean Shipping Reform Act of 1998) and section 4.24 of P.L. 105-383 (the Coast Guard Authorization Act of 1998). Specifically, the Commission proposes to revise its regulations implementing section 8(c) of the 1984 Act and create a new 46 CFR part 530 which would govern only service contract filings. The Commission is proposing to establish new rules for service contract filing and essential terms publication, revise its regulations to include the newly permitted agreement and multiple shipper-party service contracts, and make other conforming changes. The Commission is also proposing an electronic filing system for service contracts which is intended to reduce the filing burden on parties and accommodate the efficient processing and review of what is predicted to be a large number of filed

contracts.

DATES: Submit comments on or before [INSERT DATE THIRTY (30)
DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments concerning this proposed rule to:

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SUPPLEMENTARY INFORMATION:

The Ocean Shipping Reform Act of 1998, Pub. L. No. 105-258, 112 Stat. 1902 ("OSRA") was signed into law on October 14, 1998. OSRA makes several changes to the existing system by which the Federal Maritime Commission ("FMC" or "Commission") regulates ocean shipping in the foreign commerce of the United States. OSRA makes significant changes to the provisions governing service contracts under the 1984 Act. On November 13, 1998, the Coast Guard

Authorization Act of 1998, P. L. 105-383, 112 Stat. 3411, was signed by the President. That Act also amends the 1984 Act by redefining the term "common carrier." Accordingly, the Commission now proposes to update, redesignate and clarify its rules to implement the changes mandated by these laws. This supplemental information presents these changes in detail.

The proposal seeks to carry over existing regulations (particularly 46 CFR §§ 514.7 and 514.17) where they comport with the revisions to the 1984 Act made by OSRA and where they represent a sound approach. The purpose, scope, applicability and definition sections, found in proposed regulations §§ 530.1, 530.2, 530.3 and 530.4 are adapted from current §§ 514.1(b) (purpose), 514.1(a) (scope) and 514.2 (definitions). These proposed rules envision an electronic filing system for service contracts, and coordinate the publication of essential terms under section 8(c) of the 1984 Act with the publication of tariffs under proposed regulation 46 CFR part 520.

OSRA fundamentally revises the statutory scheme for tariffs and service contracts. Tariffs are no longer required to be filed with the Commission. Service contracts, on the other hand, are required to be filed confidentially with the Commission, and must contain specified essential terms. Similarly, while OSRA preserves the requirement that certain essential terms be published, that requirement has been significantly scaled back and includes only

the following terms: (1) origin and destination port ranges; (2) the commodity or commodities involved; (3) the minimum volume or portion; and (4) the duration of the service contract. Just as significant to service contracting is the repeal of the "me-too" right for similarly situated shippers. Carriers will no longer be required to offer the same contract terms to similarly situated shippers.

Another significant change made by OSRA is the authorization of non-conference ocean common carrier agreements to enter into service contracts. Furthermore, under OSRA, unrelated, multiple shippers may enter into service contracts without necessarily being members of shippers' associations. These changes significantly free parties to make service contracts centered around the realities of the marketplace.

The Commission is mindful of several competing interests regarding the filing of service contracts. First, the filing requirements must be crafted with an appreciation for regulated entities' interests in simple, speedy and straightforward filing procedures. Second, they must enable the Commission to fulfill its statutory duty to guard against section 10 violations and section 6(g) matters. This responsibility on the part of the Commission is especially important now that service contracts will be confidential; potentially aggrieved parties will rely on Commission oversight. This will be complicated by the predicted increase in

the sheer number of service contracts filed. It is with these goals in mind that the Commission proposes the following regulations, designed to enable the Commission to fulfill its regulatory mandate while imposing a minimal burden on regulated parties.

The Proposed Rule

The proposed rule redesignates the Commission's rules on service contracts currently in 46 CFR part 514 into a new part, 46 CFR part 530. The following discussion covers the proposed rule's treatment of service contract filings; essential terms publications; carrier duty to disclose to collective bargaining agreements; confidentiality; excepted commodity ("mixed") and global contracts; re-rating; and miscellaneous matters.

General filing requirements

Filing requirements in the existing regulations (46 CFR part 514) as well as in the proposed regulations, govern initial filings, amendments, and notices of correction and cancellation. In an attempt to update and streamline the filing system, as well as enable the Commission to fulfill its statutory monitoring duty over service contracts, the Commission is proposing to initiate a filing system which would be completely electronic. Due to the volume of service contract filings the Commission expects after May

1, 1999, adoption of an electronic, as opposed to a paper-based, system appears to be the most practical approach.

Given the exceptionally short legislative deadlines and limitations on resources available to the Commission, the only viable approach to implementing an electronic filing system at this juncture would be to create a system adapted from the Commission's currently used filing system for the Essential Terms ("ETs") of service contracts. The proposed rule reflects this approach. It envisions accepting only electronic filings (including amendments to service contracts filed prior to May 1, 1999); amendments to paper-filed service contracts would also necessitate the re-filing in electronic form of the underlying, i.e. initial, contract itself.

While the creation of an entirely new, tailor-made service contract filing system could have benefits over the proposed approach in terms of simplicity or flexibility, the creation of such a new system simply is not possible before May 1, 1999. The Commission invites comments on approaches to establishing such a new system, however, and if warranted and financially feasible could pursue such a strategy as a longer-term goal, treating the proposed system as a transitional solution.

The Commission has determined not to propose continuing the paper filing of service contracts, based on an assessment that an increased volume of contracts would create unworkable

administrative burdens on both the industry and the agency and could substantially impair the Commission's ability to fulfill its oversight, enforcement, and monitoring responsibilities. However, commenters are welcome to address this matter as well.

The proposed regulation includes the details of this system. See, § 530.9 and Appendix A. The Commission solicits from the industry its views on the benefits and limitations of this approach and any suggested alternatives.

Registration of filers

The proposed rule carries over the existing filing fees for service contract and amendment filings, and for corrections to service contracts. Also, provision has been made to "grandfather" organizations currently registered to file essential terms publications, with no requirement that they submit a further registration fee. All individuals who presently possess an organization maintenance log-on be issued a new log-on and password for the new system. All other potential service contract filers must pay the requisite fee and be registered for service contract filing prior to filing service contracts. The proposed rule would also "grandfather" software which was certified by the old system, but would allow software providers to test their filing software if they so desired for the same certification fee.

Publication of essential terms

OSRA continues to require the publication of certain essential terms of service contracts. Section 8(c)(3) instructs carrier parties to service contracts to make these essential terms available to the public "in tariff format." The proposed regulation suggests that carriers and conferences should be able to satisfy this obligation in the same way they publish their tariff information under proposed 46 CFR part 520. Comments are solicited on any other options which might also be feasible and which would affect compliance with the publication requirement of the Act.

In an effort to assist the shipping public find statements of essential terms published according to this part, the Commission anticipates making a list of the locations of all such publications available on the FMC website. 46 CFR § 530.13(f). The Commission requests comments this proposal.

OSRA removes the requirement that carriers and conferences provide "me-too" rights to similarly situated shippers on their service contracts. Similarly, OSRA no longer requires carriers and conferences to publish most of the essential terms of service contracts filed with the Commission. It appears that allowing carriers and conferences to publish their (non-confidential) essential terms by the same method they publish their tariffs is the most efficient approach to the publication requirement. Therefore, the proposed rule cross-references the technical

requirements of the newly proposed tariff publication regulations to effectuate the essential terms publication required under this part.

Agreements and service contractins

Commission regulation governing the filing of individual carrier and conference service contracts remains, for the most part, the same as it had been under previous Commission regulation. However, there has been one significant change by OSRA: the additional authority for an "agreement" (as opposed to only a "conference") to enter into service contracts. This raises several issues which the Commission will address in this rulemaking.

Often, non-conference agreements do not create a central secretariat or authority to act on the agreement's behalf, nor do they maintain a common tariff. Unlike conferences, therefore, such agreements may have no uniform or standard method for filing or publishing the agreement service contract matters.¹

With regard to non-conference agreements, the proposed rule indicates that any of the agreement parties to the service contract may file; if none of the parties properly files, the liability for

¹ Indeed, while the statute speaks of a "carrier or an agreement" entering into a contract, in instances where the agreement is not a distinct legal entity, the Commission anticipates that it is the multiple carrier members, rather than the agreement itself, who would be signatories to such a contract.

such failure to file would rest equally on all agreement members party to the contract.

The question arises of how to require publication of statements of essential terms by agreements which do not have a common tariff. The proposed rule requires that each member of a non-conference agreement publish the statement of essential terms in its individual tariff, and reflect in its statement of essential terms the identity of the other carrier parties. 46 CFR 530.13(b). The Commission welcomes any comments as to alternative approaches by which non-conference agreement carriers may satisfy the publication requirement of section 8(c)(3) of the Act as revised by OSRA.

A similar issue arises with the Commission's policy regarding the filing by conferences of service contracts to which fewer than all members are parties. In the past, the Commission's policy has been to impose on the conferences the duty to file and publish the service contract material for service contracts entered into under the conference agreement, in which fewer than all the members would participate. 46 CFR § 514.4(d)(5)(B). For service contracts outside the scope of the conference, the conference retained the authority to file on behalf of its member(s), but the carrier(s) involved also had a separate duty to file. 46 CFR § 514.4(d)(5)(B)(2)(ii).

It appears necessary to revisit these policies at this time.

A requirement that conferences file service contracts entered into by a subset of its membership would seem inconsistent with OSRA's new prohibition on agreement members being required to disclose the terms of their contracts, as well as other provisions regarding independent and confidential service contracting. Therefore, we are proposing that, for filing and publication purposes, contracts entered into by some, but not all, of a conference's members be treated in the same manner as non-conference agreement contracts. 46 CFR §§ 530.5, 530.13.

Finally, the Commission must resolve how to handle re-rating issues which might arise under non-conference agreement service contracts. By definition, agreements do not have common tariffs at which carriage under a terminated or canceled contract could be re-rated. Therefore, if a service contract is rejected for not meeting the filing requirements, deadlines, etc., the issue of which rate should be applied to cargo which moved under that contract presents itself. One approach to this problem would be to re-rate the cargo at the tariff rate for that commodity of the carrier which actually moved the cargo. 46 CFR § 530.16. While this is the approach presented in the proposed regulations, the Commission is interested to hear any others which might be suggested in the comments.

Duty to Disclose to Labor Organizations

In light of the confidentiality of service contracts and some of their essential terms, OSRA amends section 8(c)(4) to require that a carrier which is a party to or is subject to a collective bargaining agreement with a labor organization must respond within a reasonable period of time to that labor organization's request regarding the carrier's responsibility for certain activities related to cargoes transported under a service contract. The Commission is proposing, at 46 CFR § 530.8, certain definitions of "reasonable period of time" for responding to a labor organization's request for information under section 8(c)(4) of the Act. This definition reflects the concern that labor organizations are apprised of the handling responsibility for cargo before that cargo arrives at the discharge port. The Commission expects that aggrieved labor organizations will use existing Commission processes in the event of noncompliance by a carrier. The Commission would entertain proposals for more specific and stringent rules if the existing standards and procedures prove inadequate in practice.

Commission Confidentiality

Proposed regulation 46 CFR § 530.4 seeks to amend the confidentiality provision as follows: "Nothing contained in this part shall preclude the Commission from providing certain information from service contracts to another agency of the Federal

government of the United States as deemed necessary." Other federal agencies, in the administration of their statutorily mandated responsibilities, may have a need for service contract information which will otherwise be filed confidentially with the Commission and which under the existing 1984 Act is disclosed in the published essential terms statement. In an April 1, 1998 floor statement, the Senate bill's sponsor, Senator Hutchison, noted that

Federal agencies have expressed concerns over how they are to ensure ocean carrier compliance with United States cargo preference law requirements concerning shipping rates in an era of service contract rate confidentiality. The FMC is encouraged to work with affected Federal agencies to address this concern.

Cong. Rec. S3320, (daily ed. April 21, 1998) (statement of Sen. Hutchison). Similarly, in an October 1, 1998 floor exchange, the Chairman of the Senate Committee on Commerce, Science and Transportation, Senator McCain, asked Senator Hutchison

to clarify the ability of the FMC to share confidential service contract rate and service information with other Federal agencies to ensure that the U.S.-fleet shipping rates for preference cargo shipments meet statutory requirements.

Cong. Rec. S11302 (daily ed. Oct. 1, 1998) (Statement of Sen. McCain). Senator Hutchison replied,

. . .I want to make it clear that the FMC is authorized to share with another Federal agency service contract information that parties of the service contract have legally decided to protect from public disclosure in order to enable that Federal agency to ensure the compliance of U.S.-flag ocean common carriers with cargo preference law shipping rate requirements. Of course, that confidential service contract information would remain protected from disclosure to the public consistent with the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, and other applicable

Federal Laws.

Cong. Rec. S11302 (daily ed. Oct. 1, 1998) (Statement of Sen. Hutchison). Thus, it is clear that the confidentiality afforded to service contract information is limited to nondisclosure to the public, and was not intended by Congress to fetter other Federal agencies in their oversight responsibilities.' It is therefore the intention of the Commission to allow access to filed contracts to Federal government agencies where appropriate; any such disclosures will not jeopardize the statutory aim of nondisclosure of confidential service contract information to nongovernmental entities.

Service Contracts with NVOCCs as shipper parties

Service contracts with non-vessel-operating common carriers ("NVOCCs") remain subject to special requirements for certification of NVOCCs' financial responsibility. See 46 CFR § 514.7(e) and 46 CFR § 530.7. The financial responsibility procedures in this proposed rule comport with the proposed regulation at 46 CFR § 515.27 (dealing with financial responsibilities of ocean transportation intermediaries).

² With respect to Department of Defense cargo preference law oversight, moreover, it also appears that the Federal Acquisition Regulations, 48 CFR §§ 9.104-1(g), 9.105-1(c)(3), 15.404-1(a)(1), and 15.403-3(a), would provide the Department access to the service contract information in any event, although in a less efficient and more cumbersome manner.

Exceptions and rejection

Congress has directed the Commission to refuse to accept any service contract dealing with commodities excepted from application by section 8(c)(2) or receiving an exemption under section 16 of the 1984 Act. S.Rep. No. 105-61, 105th Cong. 1st Sess., at 23 (1997) ("Report"). The Commission proposes to continue to permit the filing of service contracts which include both excepted and non-excepted commodities ("mixed" contracts), in lieu of requiring the parties to rewrite their contracts to separate excepted and non-excepted commodities for filing purposes. Therefore, the Commission seeks comments on proposed regulation 46 CFR § 530.14, particularly regarding the burden that would result to filers if service contracts were required to be drafted specifically so that excepted commodities were not covered. The proposal indicates that the Commission would refuse to accept for filing service contracts which exclusively cover excepted commodities, in keeping with the Report language.³

³ The Commission solicited comment on this subject in Docket No. 85-6, Notice of Inauirv Concerning the Interpretation of Section 8(a) and (8) (c) of the Shipping Act of 1984, as well as Docket No. 86-6, Service Contracts. In Docket No. 86-6, the Commission issued its Final Rule, 52 Fed. Reg. 23989 (June 26, 1989), and noted that "service contracts often include a mixture of exempt and non-exempt commodities, so that a shipper can obtain a better contract rate. Presumably, the ability to offer service contracts on mixed commodities also benefits carriers." Id. at 23996. The Commission assumes that the same holds true for the shipping industry today, but solicits comment on industry practice and the burden which would be imposed if the Commission were to require that filed service contracts cover only non-

Global service contracts

Members of the carrier industry have suggested that the Commission should accept filings of service contracts which include terms covering both U.S.-to-foreign and foreign-to-foreign movements of cargo (hereinafter "global contracts"). Clearly, the foreign-to-foreign activity lies outside the Commission's jurisdiction to regulate. This issue was before the Commission previously in Docket No. 92-20, Service Contracts in Foreign-to-Foreign Trades, Advance Notice of Proposed Rulemaking, 57 Fed. Reg. 18855 (May 1, 1992). That proceeding was discontinued, as carriers, conferences and shippers' associations strongly opposed the proposal to allow the filing of global service contracts. In their comments in that proceeding, several carriers and conferences noted that there was no business efficiency reason to allow the filing of global service contracts as "there was no commercial need" for the ability to so. In contrast, several large shippers expressed their desire to have the ability to enter into global service contracts and to thereby simplify and aggregate their traffic and logistics operations.

Many commenters in that proceeding suggested that global contracting would severely interfere with or complicate "me-too" rights. Furthermore, the National Customs Brokers and Forwarders Association of American stated that allowing such global contracts

excepted commodities.

would give rise to discrimination in favor of large global shippers that could commit to larger worldwide volumes. However, Congress has eliminated the Commission's mandate to guard against unreasonable discrimination (except with regard to clearly defined protected classes), retooling the Act to place more emphasis on individual contracting and the marketplace.

There remains a concern, however, that allowing global service contracts, in which rates in U.S. trades will depend on minimum volume commitments calculated on a global basis, will complicate the Commission's ability to monitor and enforce carriers' compliance with their filed contract rates. While there is merit to this point, the legal obstacles do not appear to be insurmountable. There is no bright-line geographic limit to the Commission's ability to compel information from carriers. Rather, information sought must be "not unreasonable" and "reasonably relevant" to a lawful Commission inquiry. United States v. Morton Salt Company, 338 U.S. 632 (1950); Far East Conference v. Federal Maritime Commission, 337 F.2d 146 (D.C. Cir. 1964). Therefore, if information about the volumes moving in foreign-to-foreign commerce is relevant to the question of what rate applies in a U.S.-to-foreign trade (clearly a matter within the Commission's jurisdiction), then it would appear that such information may be compelled by the Commission. Moreover, we note that proper administration of certain sections of the 1984 Act, i.e., section

13(b)(5), redesignated as 13(b)(6) by OSRA, would seem to require that the Commission have the ability to compel information about cross-trades. However, as a practical matter, auditing arrangements with global quantities will undoubtedly generate substantial challenges.

Some of the objections in Docket No. 92-20 focused on whether global volumes were consistent with the requirement for the filing of minimum volume commitments in public essential terms. While that issue was more important when parties had the right to "meetoo" the terms, it still has some significance. The Commission proposes an approach that, when parties have a unitary minimum volume commitment covering U.S.- and foreign-to-foreign trades, it publish the amount in its public essential terms publication, but clearly indicate for the public that the volume includes quantities moving in foreign-to-foreign trades.

Furthermore, the concerns that conferences and niche carriers had in 1992 may have disappeared completely with the ability of non-conference agreements to enter into service contracts. Under OSRA, alliances, along with individual carriers, will have the ability to offer global service contracts. This ability, of course, will also be affected by the Commission's approach on the treatment of less-than-total agreement service contracts, as discussed more fully above.

Another question raised in Docket 92-20 was whether filing of

global contracts would somehow extend other provisions of the Act, such as the prohibited acts in section 10, to the foreign-to-foreign legs. It is clear, however, that there would be no authority for the Commission to spontaneously extend its jurisdiction in this manner. Therefore, it appears that there is little policy or legal necessity to require parties to artificially structure their commercial dealings to be coextensive with the Commission's regulatory jurisdiction. Rather, a more sound approach would seem to be for carriers to enter into contracts based on the requirements of the global market, for carriers to submit them in their true and complete totality, and for the Commission to regulate those carriers, their agreements and service contracts to the extent of its authority, and not beyond.

It appears that the significant revisions to the 1984 Act necessitating sweeping changes to the service contract filing regulations, make this proposed rulemaking proceeding an opportune moment for the Commission to revisit the issues presented by the acceptance of filing for both mixed and global contracts. In light of the regulatory changes mandated by OSRA, the current proposal seeks to reduce the burden on the entities subject to the section 8(c) filing and publication requirements, together with recognition of the Commission's need to have the ability to easily access and search the filed documents. Thus, the proposed regulation allows the filing of service contracts which include (but are not limited

to) excepted and exempted commodities and service outside the U.S. foreign trades. The Commission is concerned that it not overburden its filers, or encourage them to create artificial documents which do not reflect the actual underlying business agreement which the service contract represents.

Inland portions of through movements to Europe

Unlike the United States, it appears that the European Commission ("E.C.") -- while permitting conference service contracts for the ocean movement of cargo -- prohibits conference contracts which cover the movement of cargo to inland points in Europe. Therefore, it seems that carriers in the U.S.-European trade may participate in a conference service contract covering U.S.-Europe ocean movements, and sign an individual service contract covering European inland transport for the same shipper customer. A question has arisen as to whether these contracts for European inland transport must be filed with the Commission. It would seem that filing would be consistent with statutory requirements to the extent the contracts establish the European inland portion of a through rate charged by a carrier in a U.S.-Europe intermodal movement. However, the Commission welcomes comments on how it could minimize the regulatory burdens occasioned by these differences in regulatory regimes, to the extent it may do so given its own statutory responsibility.

Cross-referencing tariffs

Presently, most filed service contracts contain re-occurring terms common to all of a carrier's or conference's service contracts (including matters such as free time and demurrage, bunkering rates, currency matters, etc.) the complete text of which would be very cumbersome for the carrier party to file with the service contract. Therefore, service contracts almost always make cross-reference to terms contained in that carrier's or conference's tariff or an essential terms publication.

The Commission recognizes that it was Congress' intent, by lifting the requirement that tariffs be filed with the Commission, to allow parties to service contracts more freedom and flexibility in their commercial arrangements. The proposed rule, § 530.9(c)(2), thus permits filed service contracts to refer to terms outside the four corners of the filed service contract, but only if they are contained in the carrier's or conference's tariff publication.

Another option for the system is to allow service contract filers to file with the Commission a "general rules" filing as a part of their service contract register. This might be useful for filers which file multiple service contracts with duplicative and/or commonly applicable items (e.g. rules for hazardous cargo, equipment interchanges, mileage guide publications, location groups, inland rates, and bills of lading); rather than repeatedly

submitting the text of these amendments in each contract filing, filers could simply reference their "general rules" filing. This would also maintain the confidentiality of such terms. Filing and amendments to these "general rules" would be subject to the filing requirements of service contracts and amendments. The Commission wishes to hear how the industry views this issue and what options may be available for its resolution.

Rejection of service contract filings

Commission regulations currently outline the procedures for rejection of service contracts and essential terms filed with the Commission. 46 CFR § 514.7(j). The Commission rejects service contracts or their amendments which do not conform to the requirements of the 1984 Act or Commission regulation, including timeliness of filing and adequacy and accuracy of the publication of the statement of essential terms. The proposed regulation adapts the current rejection rules as necessary to meet the changes to the 1984 Act made by OSRA. The proposed regulations also provide for "non-acceptance," a new term reflecting the congressional mandate that the Commission not accept for filing service contracts which cover only excepted commodities, consistent with congressional directives.

The proposed regulations also anticipate re-rating for service contracts with non-conference agreements. Such re-rating will be

made, under proposed regulation 46 CFR part 530 subpart E, at the tariff rate of the carrier which actually carried the cargo in question.

The definitions of ocean common carrier and conference are changed to reflect the concerns the Commission discussed in its proposed Agreements rulemaking. See, 46 CFR § 535.

The reporting requirements contained in 46 CFR 530 have been submitted to the Office of Management and Budget (OMB). The estimated total annual burden for the estimated 155 annual respondents is 303,953 manhours. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, N.W., Washington,

D.C. 20503 within 30 days of publication in the Federal Register.

The FMC would also like to solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record.

The Chairman certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed amendments will not, if promulgated, have a significant impact on a substantial number of small entities. The affected universe of the parties is limited to vessel-operating common carriers. The Commission has determined that these entities do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act as they typically exceed the threshold figures for number of employees and/or annual receipts to qualify as a small entity under Small Business Administration guidelines.

List of subjects for 46 CFR part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission proposes to remove 46 CFR part 514 and to add new 46 CFR Part 530, as set forth below:

1. Add 46 CFR part 530 to subchapter B -- REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES IN FOREIGN COMMERCE.

2. Add 46 CFR part 530 -- Service Contracts, to read as set forth below:

Part 530 -- SERVICE CONTRACTS

Subpart A -- General Provisions

Sec.

- 530.1 Purpose.
- 530.2 Scope and applicability.
- 530.3 Definitions.
- 530.4 Confidentiality.
- 530.5 Duty to file.
- 530.6 Service contracts with NVOCCs.
- 530.7 Certification of shipper status.
- 530.8 Duty to labor organizations.

Subpart B - Filing Requirements

- 530.9 Service contracts.
- 530.10 Notices.
- 530.11 Amendment, correction, and cancellation.

530.12 Filing fees and other costs.

Subpart C - Publication of Essential Terms

530.13 Publication.

Subpart D - Exceptions

530.14 Exceptions.

Subpart E - Rejection

530.15 Contract non-acceptance, rejection and notice.

530.16 Implementation, prohibition and re-rating.

Subpart F - Recordkeeping and Audit

530.17 Recordkeeping and audit.

Appendix A to Part 530 -- INSTRUCTIONS FOR THE FILING OF SERVICE CONTRACTS

Exhibit 1 to Part 530 -- FILER REGISTRATION FORM AND INSTRUCTIONS

Authority: 46 U.S.C. App. 1704, 1705, as amended by Pub. L. No. 105-258. 112 Stat. 1902.

SUBPART A - GENERAL PROVISIONS

§ 530.1 Purpose.

The purpose of this part is to facilitate filing of service contracts and publication of certain essential terms of those service contracts as required by section 8(c) of the Shipping Act of 1984 ("Act") . This part enables the Commission to review service contracts to ensure that these contracts and the parties to

them comport to the requirements of the Act. It is also the purpose of this part to implement electronic filing provisions for service contracts to facilitate compliance and minimize the burden on the oceanborne commerce of the United States.

§ 530.2 Scope and applicability.

An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of the Act.

§ 530.3 Definitions.

When used in this part:

(a) Act means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998.

(b) Agreement means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof which has been filed and effective under 46 CFR part 535 with the Federal Maritime Commission. The term does not include a maritime labor agreement.

(c) Authorized person means a carrier itself or a duly appointed agent thereof who is authorized to file service contracts on behalf of the carrier party to a service contract and to publish the corresponding statement of essential terms and registered by the Commission to file under § 530.5(d) and Appendix A of this part.

(d) BTCL means the Commission's Bureau of Tariffs, Certification and Licensing or its successor bureau.

(e) Common carrier means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) if the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) only with respect to those commodities.

(f) Conference means an agreement between or among two or more ocean common carriers which provides for the fixing and adherence to uniform tariff rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; but the

term does not include joint service, consortium, pooling, sailing, or transshipment agreements.

(g) Controlled carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(h) File or filing (of service contracts or amendments thereto) means use of the Commission's electronic filing system for receipt of a service contract or amendment and the recording of its receipt.

(i) Labor aareement means a collective-bargaining agreement between an employer subject to the Act, or group of such employers, and a labor organization or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing

for the formation, financing, or administration of a multi-employer bargaining group, but the term does not include an assessment agreement.

(j) Ocean common carrier means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or a chemical parcel tanker.

(k) Non-vessel-operating common carrier ("NVOCC") means an ocean transportation intermediary as defined by section 3(17)(B) of the Act.

(l) Service contract means a written contract between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers, in which the shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the individual ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(m) Shipper means a cargo owner; the person for whose account the ocean transportation is provided; the person to whom delivery

is to be made; a shippers' association; or an NVOCC that accepts responsibility for payment of all applicable charges under the service contract.

(n) Statement of essential terms means a concise statement of the essential terms of a service contract required to be published under § 530.13 of this part.

§ 530.4 Confidentiality.

All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence. Nothing contained in this part shall preclude the Commission from providing certain information from or access to service contracts to another agency of the Federal government of the United States.

§ 530.5 Duty to file.

(a) Generally. The duty under this part to file service contracts and notices, and to publish statements of essential terms shall be upon the carrier party or conference which is the signatory to the service contract.

(b) Agreements. A service contract entered into by all members of a non-conference agreement may be filed by any member of that agreement, as the carrier parties may so designate. Signatories to a service contract required to file a service

contract under this part shall be jointly and severally liable for a failure to file the service contract.

(c) Conferences. (1) The duty to file shall be upon the conference for service contracts entered into by a conference on behalf of its full membership.

(2) A service contract entered into by fewer than all the members of a conference may be filed by any participating carrier, as the participating carriers may so designate. Signatories to a service contract required to file a service contract under this part shall be jointly and severally liable for a failure to file the service contract.

(d) Reaistration. (1) Application. Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier party in writing, by submitting to BTCL the Registration Form in Exhibit 1 to this part and the appropriate fee as defined under § 530.12 of this part.

(2) Approved reaistrations. BTCL shall grant Registrants with software certified by BTCL a log-on ID and password for filing and amending service contracts.

(3) Software certification. Certification of software may be requested by appointment through the Commission's Office of Information Resources Management ("OIRM") and payment of the appropriate fee as set forth in § 530.12. OIRM will test the software as set out in Appendix A to this part. Organizations

certified prior to May 1, 1999 for the batch filing of "Essential Terms Publications" ("ETs") in the Commission's former "Automated Tariff Filing Information System" ("ATFI") are not required to re-certify their software but may if they so choose using the same procedure as for initial certification.

(4) Emergencies. In an emergency, a person, already authorized to maintain and edit its firm's organization record under Appendix A, may change a "publisher" under Appendix A, verbally notify BTCL, and promptly submit the proper documents.

(5) Prior reaistration and certification. Each organization registered to file essential terms publications before May 1, 1999 will be issued a log-on ID and password for access to file service contracts under the Commission's electronic filing system.

§ 530.6 Service contracts with NVOCCs.

No ocean common carrier or agreement among ocean common carriers may execute or file any service contract in which a contract party, an affiliate of such contract party, or a member of a shippers' association, entitled to receive service under the contract, is an NVOCC, unless such NVOCC has a published tariff and proof of financial responsibility as required by sections 8 and 19 of the Shipping Act of 1984 and Commission regulations under this part, and 46 CFR parts 515 and 520.

§ 530.7 Certification of shipper status.

(a) Certification. The shipper contract party shall sign and certify on the signature page of the service contract its shipper status (e.g., owner of the cargo, shippers' association, NVOCC, or specified other designation), and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the contract.

(b) Proof of tariff and financial responsibility. If the certification completed by the contract party under paragraph (a) of this section identifies the contract party or an affiliate or member of a shippers' association as an NVOCC, the ocean common carrier, conference or agreement shall obtain proof that such NVOCC has a published tariff and proof of financial responsibility as required under sections 8 and 19 of the 1984 Act before signing the service contract. An ocean common carrier, conference or agreement can obtain such proof by the same methods prescribed in § 515.27 of this chapter.

(c) Joining shippers' association during term of contract. If an NVOCC joins a shippers' association during the term of a service contract and is thereby entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier, agreement or conference the proof of compliance required by paragraph (b) of this section prior to making any shipments under the contract.

(d) Reliance on NVOCC proof; independent knowledge. An ocean common carrier, agreement or conference executing a service contract shall be deemed to have complied with section 10(b)(12) of the Act upon meeting the requirements of paragraphs (a) and (b) of this section, unless the carrier party had reason to know such certification or documentation of NVOCC tariff and bonding was false.

§ 530.8 Duty to Labor Organizations.

(a) In response to a written request transmitted from a labor organization with which it is a party or is subject to the provisions of a collective bargaining agreement with a labor organization, an ocean common carrier shall state, within a reasonable period of time, whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transported under a service contract:

(1) the movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within a port area;

(2) the assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

(3) the assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; or

(4) the assignment of container freight station work and maintenance and repair work performed at a dock area or within the port area.

(b) Terms. (1) For the purposes of this section, the terms "dock area" and "within the port area" shall have the same meaning and scope as defined in the applicable collective bargaining agreement.

(2) For the purposes of this section, a "reasonable period of time" means:

(i) if the cargo in question is due to arrive in less than five (5) days from the date of receipt of the request as defined in paragraph (a) of this section, two (2) days from the date of receipt of the request; but

(ii) if cargo in question is due to arrive in more than five (5) days from the date of receipt of the request as defined in paragraph (a) of this section, four (4) days from the date of receipt of the request.

(3) For the purposes of this section, "movement" includes, but is not necessarily limited to, the normal and usual aspects of the loading and discharging cargo in containers; placement, positioning and re-positioning of cargo or of containers; the insertion and removal of cargo into and from containers; and the storage and warehousing of cargo.

(4) For the purposes of this section, "assignment" includes,

but is not limited to, the carrier's direct or indirect control over the parties which, the manner by which, or the means by which the shipper's cargo is moved, regardless of whether such movement is completed within or outside of containers.

(5) For the purposes of this section, "transmit" includes first-class mail, by facsimile, by telegram, hand-delivery, or electronic mail ("e-mail").

(c) Applicability. This section requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier.

(d) Disclosure not deemed admission or agreement. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement.

(e) Dispute resolution. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this section.

(f) Jurisdiction and lawfulness. Nothing in this section has any effect on the lawfulness or unlawfulness under the Shipping Act

of 1984, the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, the antitrust laws, or any other federal or state law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under section 8(c) of the Act.

SUBPART B -- FILING REQUIREMENTS

§ 530.9 Service Contracts.

(a) Authorized persons pursuant to § 530.5 of this part shall file electronically, in the manner set forth in Appendix A to this part, with BTCL a true and complete copy of every service contract before any cargo moves pursuant to that service contract, and as specified by this part.

(b) Every service contract filed with the Commission shall include the complete terms of the contract, including, but not limited to, the following:

(1) the origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) the destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

- (3) the commodity or commodities involved;
- (4) the minimum volume or portion;
- (5) the service commitments;
- (6) the line-haul rate;
- (7) liquidated damages for non-performance (if any);
- (8) duration;

(9) the legal names and business addresses of the contract parties; the legal names of affiliates entitled to access the contract; the names, titles and addresses of the representatives signing the contract for the parties; and the date upon which the service contract was signed. An agreement service contract must identify the FMC Agreement Number(s) under which the service contract is filed. Carriers, conferences and/or agreements which enter into contracts that include affiliates must in each instance either:

(i) list the affiliates' business addresses; or

(ii) certify that this information will be provided to the Commission upon request within ten (10) business days of such request. However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates. Subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association,"

etc.);

(10) a certification of shipper status in accordance with § 530.7;

(11) a description of the shipment records which will be maintained to support the contract and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 530.17; and

(12) all other provisions of the contract.

(c) Certainty of terms. The terms described in paragraph (b)(1)-(8) of this section may not:

(1) be uncertain, vague or ambiguous; or

(2) make reference to terms not explicitly detailed in the service contract filing itself, unless those terms are contained in a tariff publication in accordance with the requirements of 46 CFR part 520.

(d) Other requirements. Every service contract filed with BTCL shall also include, in the manner set forth in Appendix A:

(1) A unique service contract number, and consecutively numbered amendment number, if any, of more than one (1) but less than ten (10) alphanumeric characters in length ("SC Number"); and

(2) A number of more than one (1) but less than ten (10) alphanumeric characters in length which is the same number assigned to the filer's publication of statement of essential terms ("ET

Number") .

~~§ 530.10 Notices.~~

(a) Notice to the Commission. Within 10 days of the occurrence of any event listed below, there shall be filed with the Commission, pursuant to the same procedures as those followed for the filing of an amendment pursuant to § 530.11 and Appendix A of this part, a detailed notice of:

(1) Correction (clerical or administrative errors);

(2) Cancellation;

(3) Termination by mutual agreement, breach or default not covered by the service contract;

(4) Adjustment of accounts, by rerating, liquidated damages, or otherwise under § 530.16;

(5) Final settlement of any account adjusted as described in § 530.16; and

(6) any change to:

(i) the name of a basic contract party; or

(ii) the list of affiliates, including changes to legal names and business addresses, of any contract party entitled to receive or authorized to offer services under the contract.

(b) Notice to contract party. A proposed final accounting or rerating shall be issued to the appropriate contract party within 60 days of termination, discontinuance, breach or default of the

service contract, for:

(1) Liability for liquidated damages provided for by the service contract; or

(2) Termination, breach or default not covered by the contract.

§ 530.11 Amendment, correction, and cancellation.

(a) Amendment. Service contracts may be amended by mutual agreement of the parties to the contract and shall be filed electronically with the Commission in the manner set forth in § 530.9 and Appendix A of this part.

(b) Corrections. Either party to a filed service contract may request permission to correct clerical or administrative errors in the terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission, accompanied by remittance of a \$233 service fee, and shall include:

(1) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected;

(2) A paper copy of the proposed correct terms. Corrections shall be indicated as follows:

(i) Matter being deleted shall be struck through; and

(ii) Matter to be added shall immediately follow the language

being deleted and be underscored;

(3) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(4) Documents supporting the clerical or administrative error; and

(5) A brief statement from the other party to the contract concurring in the request for correction.

(6) If the request for correction is granted, the carrier, agreement or conference shall file the corrected contract provisions using a special case number as described in Appendix A.

(c) Cancellation. (1) Events anticipated by the contract; rerating. An account may be adjusted for events and damages covered by the service contract. This shall include adjustment necessitated by either liability for liquidated damages under § 530.9(b)(8), or the occurrence of an event described in paragraph (2) below.

(2) Events not anticipated by the service contract. In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper party has failed to tender the minimum quantity or portion required by the service contract:

(i) Further or continued implementation of the service

contract is prohibited; and

(ii) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions as set forth in § 530.16.

§ 530.12 Filing Fees and other costs.

(a) Under the authority of the Independent Offices Appropriation Act, 31 U.S.C 9701, the Commission assesses a filing fee for the filing of service contracts, modifications and corrections thereto. Unless otherwise provided in this part, checks, drafts or money orders shall be remitted and made payable to "Federal Maritime Commission" 800 N. Capitol Street, N.W., Washington, DC 20573.

(b) Unless otherwise specified, overdue payments will be charged interest in accordance with the rate established by the Department of the Treasury for each 30-day period or portion thereof that the payment is overdue. In addition to any other remedy and penalty provided by law and regulation, if payment is overdue for 90 days the Commission may suspend or terminate electronic filing access.

(c) Fees. (1) Service contracts and amendments. The filing fee shall be \$1.63 per filing for all initial and amended service contract filings. Within 10 calendar days after the end of each month, the Office of Budget and Financial Management shall send a

billing statement for each filer.

(2) Filer reaistration. \$91 for initial registration for one firm and one individual; and \$91 for additions and changes. No fee will be assessed to continue filer registration for organizations registered for batch filing with the Commission prior to May 1, 1999.

(3) Filins Guide. \$25 for diskette; \$49 for paper format. Requests for filing guides should be made in writing and addressed to: "BTCL Manuals," Federal Maritime Commission, Washington, DC 20753. A check for the appropriate amount should be made to the "Federal Maritime Commission."

(4) Corrections. \$233 for corrections to service contracts under § 530.11(c).

(5) Software certification. \$496 per test submission.

SUBPART C -- PUBLICATION OF ESSENTIAL TERMS

§ 530.13 Publication.

(a) Contents. All authorized persons who have a duty to file service contracts under § 530.5 are also required to make available to the public, contemporaneously with the filing of each service contract with the Commission, and in tariff format, a concise statement of the following essential terms:

(1) the port ranges:

- (i) origin
- (ii) destination;
- (2) the commodity or commodities involved;
- (3) the minimum volume or portion; and
- (4) the duration.

(b) Method. The statement of essential terms shall be published as a separate part in the filer's tariff publication, conforming to the format requirements set forth in 46 CFR part 520. Where there is more than one carrier party to the service contract each of the carrier parties to the service contract shall publish the essential terms in their individual tariff publication pursuant to 46 CFR part 520; except however, when the carrier parties comprise the full membership of a conference, publication shall be made in the conference tariff.

(c) References. The statement of essential terms shall contain the same number as that for the confidentially filed service contract ("ET Number").

(d) Terms. (1) If any of the essential terms include figures for commodities exempt under the Act or moving outside of the United States trades, the statement of essential terms shall so note.

(2) If there are common carrier parties to the contract other than the carrier within whose tariff publication the essential terms appear, they shall be identified in the statement of

essential terms.

(e) Agents. Common carriers, conferences, or agreements may use agents to meet their publication requirement under this part.

(f) Location. The Commission will publish on its website, www.fmc.gov, a listing of the locations of all service contract essential terms publications as defined in paragraph (a) of this section. The Commission will update this list on a periodic basis.

(g) Updating statements of essential terms. To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of most recent publication or revision. When the published statement of essential terms are affected by filed amendments pursuant to § 530.9 or corrections pursuant to § 530.11(c), the current terms shall be immediately changed and published in the relevant statement of essential terms.

(h) Commission monitoring. The Commission shall periodically monitor the publications of statements of essential terms to ensure that they conform to the corresponding filed terms.

SUBPART D - EXCEPTIONS

§ 530.14 Exceptions.

(a) Except as provided in paragraphs (b)(1) and (b)(2) of

this section, the Commission will not accept for filing service contracts which exclusively concern bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, as those terms are defined in section 3 of the Act or service contracts exempted under section 16 of the Act. Such service contracts transmitted to the Commission for filing under Appendix A shall be rejected and the filer shall be notified of the rejection.

(b) Inclusion in service contracts. An excepted commodity or exempted service listed in paragraph (a) may be included in a service contract filed with the Commission, but only if:

(1) there is a tariff of general applicability for the transportation, which contains a specific commodity rate for the excepted commodity; or

(2) the contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(c) Waiver of exemption. Upon filing under this section, the service contract shall be subject to the same requirements as those for contracts involving non-excepted commodities.

SUBPART E - REJECTION

§ 530.15 Contract non-acceptance, rejection and notice.

(a) Non-acceptance. The Commission shall not accept for filing any service contracts which relate exclusively to excepted commodities as described under § 530.14(a). The Commission shall immediately notify the filer of the non-acceptance.

(b) Notice of intent to reject. (1) Within 20 days after the initial filing of an initial or amended service contract, the Commission may reject, or notify the filing party of the Commission's intent to reject, a service contract that does not conform to the requirements of the 1984 Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(2) Except for rejection on the ground that the service contract or amendment thereto was not filed before cargo moved under it, or other major deficiencies (such as not containing a terms required by §530.9(b)(1)-(8)) the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit an appropriately modified contract.

§ 530.16 Implementation; prohibition and rerating.

(a) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day it is effective consistent with § 530.5, except for rejection under § 530.15;

(b) When the filing parties receive notice that an initial or

amended service contract or statement of essential terms has been rejected under § 530.15:

(1) Further or continued implementation of the service contract is prohibited;

(2) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper within 5 days of the date of rejection; and

(3) Detailed notice shall be given to the Commission under § 530.10 within 10 days of:

(i) The rerating or other account adjustment resulting from rejection under this paragraph; or

(ii) Final settlement of the account adjusted under §530.11.

(c) If the rejected service contract was that of an agreement with no common tariffs, the re-rating shall be in accordance with the published tariff rates of the carrier which actually transported the cargo which were in effect at the time the cargo was transported.

(d) Nothing in this section applies to service contracts unacceptable for filing with the Commission pursuant to § 530.15(a).

SUBPART F - RECORDKEEPING AND AUDIT

§ 530.17 Recordkeeping and audit.

(a) Records retention for five years. Every common carrier or agreement shall maintain original signed service contracts, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each contract.

(b) [paragraph (b) is stayed until further notice.] Where maintained. (1) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of an agreement or President or Chief Executive Officer of the carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (c) of this section.

(2) Penalty. If service contract records are not made available to the Commission as provided in paragraph (c) of this section, the Commission may cancel any carrier's or agreement's right to maintain records outside the United States pursuant to the certification procedure of paragraph (b) of this section.

(c) Production for audit within 30 days of request. Every carrier or agreement shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Economics and Agreements Analysis, submit copies of requested original service contracts or their associated records within 30 days of the date of the request.

(d) Agreement service contracts. In the case of service contracts made by agreements, the penalties for a failure to maintain records pursuant to this section shall be jointly and severally on all of the agreement members party to the service contract in question.

APPENDIX A - - INSTRUCTIONS FOR THE FILING OF SERVICE CONTRACTS

PART I -- FILING GUIDE

Service contract filing will be done in accordance with the instructions to service contract filers found in the Service Contract Filing Guide ("Filing Guide"). Filers may inspect a copy of the Filing Guide at the Commission's Bureau of Tariffs, Certification, and Licensing ("BTCL") (or its successor), 800 N. Capitol St., NW, Suite 940, Washington, DC. The Filing Guide may be purchased from BTCL for a fee specified in 46 CFR § 530.12.

The Filing Guide includes the following items:

- (a) Transaction set. The transaction set format includes all transaction set segments and segment definitions.
- (b) Data Element Dictionary ("DED"). The data element dictionary contains the definition of data elements (e.g., amendment number, date formats, etc.)

PART II -- FILING

In all cases, the filing is processed as soon as possible after submission/receipt of the filing. The FMC's service contract filing system ("system") assigns the filing date, which is the date an electronically transmitted ("on-line batch") filing session file transfer is initiated, assuming there has been a successful file transfer. After the filing is processed, a filing-results message .

is placed in the filer's electronic mailbox on the central site system.

A. Procedure. Filing is performed by transmission of prepared service contract material to the FMC system over dial-up lines from the filer's own computer, using Filing Guide service contract transaction set formats and the KERMIT or ZMODEM file transfer protocols. The conclusion of the file transfer sequence is a positive keyboard entry to initiate the transfer and a response that indicates completion of that submission. The modem must be v.34 compatible.

B. General format requirements.

1. Database format. The FMC service contract database is structured from service contract data elements and the service contract terms formed by logical grouping of those elements.

2. Transmission. On-line batch transmission of service contracts to the FMC computer is governed by the transaction sets contained in the Filing Guide. Service contract filings not complying with the regulations in this part or the formats and valid codes contained in the Filing Guide are subject to rejection.

3. Adding new transaction data. Requests for major changes or additions to the transaction set format and/or data shall be submitted in writing to BTCL, with sufficient detail and reasons for each proposed change. A contact person and telephone number also should be provided in case of questions.

(a) A proposed major change (other than a correction), such as to a transaction set, will require formal

configuration management procedures and a minimum of thirty days' advance notice of the change in the Federal Register and the "Service Contract System News", available at system log-on, and by other established Commission communications procedures.

- (b) Minor changes will be entered into the system and published as soon as possible. Such minor changes include additions to any of the standard terminology published in Appendix A to Part 520.

C. Hardware and software requirements.

The basic equipment necessary to file service contracts is a personal computer ("PC"), a VT-100 emulation software package, and a modem. The transmitted filing session must be formatted to comply with the transaction sets. The transmission may be via the use of KERMIT or **ZMODEM** file transfer protocols after establishing a link for on-line batch filing with the FMC central site computer.

The Commission will not make available to the public software packages for firms to use in formulating service contract filings. The Commission has released the Filing Guide (with transaction set) into the public domain so that qualified commercial firms can develop filing software for the general market. Firms which develop filing software, must, by appointment through the Commission's Office of Information Resources Management and payment of the fee set forth in § 530.12, test their formatting of service contracts transaction set format by submission of that data to the FMC central site computer before they will be permitted to transmit

any filings. The data must be submitted via on-line batch transmission over dial-up telecommunications links using the required file transfer protocols. Testing will require submission of sample service contract filings to the FMC system, with an evaluation of the actual results of the attempted filings to ensure that the transaction set formats are properly employed and that the filing results are consistent with the filer's expectations. Organizations certified prior to May 1, 1999 for the batch filing of "Essential Terms Publications" ("ETs") in the Commission's former "Automated Tariff Filing Information System" ("ATFI") are not required to re-test their software but may if they so choose using the same procedure as for initial registrants.

D. Registration, Log-on ID and Password.

1. System identifications ("IDs") for filing log-on and initial password are obtained by submitting the Service Contract Registration Form (Exhibit 1 to this part), along with the proper fee under § 530.12 and other necessary documents, including delegation of authority, as prescribed by this part, to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts with the FMC. However, each organization certified prior to May 1, 1999 to perform batch filing of ET publications in the Commission's former "ATFI" system, will be issued a new log-on ID and password for access to file service contracts.

2. Log-on IDs and passwords may not be shared with or loaned to or used by any individual other than the individual registrant.

The Commission reserves the right to disable any log-on ID that is shared with, loaned to or used by parties other than the registrant.

3. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued.

E. Connecting to the Service Contract Filing System.

If service contract filer equipment (hardware and software) is compatible with the configurations specified in this section and have been tested in accordance with Part II C. of this Appendix, and the proper log-on ID and password have been obtained under this section, filing services are available to filers registered under this section, over commercial telecommunications using standard (v.34 compatible) asynchronous modems with data rates up to 28800 baud. The dial-up procedures are set forth in the Filing Guide.

F. Major menu selections.

Proper connection will lead the filer to the "Logo Menu," which allows selections by any filer for "Organization Maint.," "Mailbox," "Service Contract System News," "Change Password," "Screen Setup," and "Logout." Additionally, a registered filer can access "Begin File Transfer" to initiate the on-line batch filing of a service contract. Upon the selection of "Begin File Transfer" the filer will be presented the option to select KERMIT or ZMODEM and to commence the file transfer.

G. Conformity checks.

Certain service contract data submitted to the FMC for filing are screened for compliance with conformity checks, and certain data not automatically rejected by the conformity checks are flagged for Commission examiner review. The conformity checks are syntax checks, validity checks and associative checks. The system will generally not accept service contracts which fail conformity checks. Commercially developed batch filing software can be designed to accomplish the same functionality. However, all proposed filings of service contracts must undergo the routine **system** conformity checks before they can be received into the database. Filers will be notified of automatic rejections at this stage by electronic mail, with a follow-up letter if the electronic mail has not been read within 10 days of dispatch. The conformity checks are:

1. **Syntax Checks.** Service contracts will be checked for file integrity, proper data types, field lengths, and logical sequence according to the Filing Guide's transaction sets. Data not conforming to the data element format or type in the Filing Guide's DED and the sequence requirements of the transaction sets and segment definitions will result in rejections of submitted service contracts to include the possible rejection of an entire filing if form and format errors are extensive enough to preclude processing.

2. **Validity Checks.** Certain data elements of filed service contracts will also be checked for data validity by type against the DED's published reference tables, such as amendment codes, amendment numbers and valid dates.

3. Associative Checks. The system uses associative checks to identify logical conformity with established service contract filing rules. The following are some representative types of associative checks performed by the system.

(a) Any initial service contract or amendment must have:

- (i) A valid organization number.
- (ii) No suspended carrier or object status.
- (iii) Appropriate filing authority.
- (iv) Filing date (system-assigned) equal to or less than the effective date.
- (v) Valid and appropriate filing/amendment codes.
- (vi) Valid and appropriate filing, effective, termination and expiration dates.
- (vii) When used, valid special case number and filing/amendment code "S," with no other filing/amendment codes entered.
- (viii) Each service contract must have a new (unique to carrier/conference/agreement) service contract number. The service contract number must be paired with a unique essential terms number and the pair must remain constant for all amendments and must be consistent between the filed service contracts and the published statement of essential terms.

H. Filing/amendment codes.

1. Codes. Filing/amendment codes must be valid Filing Guide codes and the effective, termination (if any) and expiration dates

must match the corresponding dates published in the statement of essential terms.

2. Multiple symbols. Filed service contracts frequently can be coded with more than one symbol. Accordingly, the field, "Amendment **Type**," will allow up to three different, compatible symbols (Amendment codes and definitions are presented in the Filing Guide and the Standard Terminology Appendix to 46 CFR part 520).

1. Control dates and history.

1. Filing date. The filing date is the date any service contractor amendment is processed by the system. Filers will have a filing date automatically assigned to all service contracts and amendments filed according to the start time of the file transfer, for file transfers that are successfully completed, U.S. Eastern Time Zone. Filers should plan the transmission of filing session files to allow for retransmission(s) starting during the same U.S. Eastern Time Zone date, in case the results of the initial transmission(s) are not successful.

2. Effective date. The effective date is the date upon which a service contract or amendment is scheduled to go into effect by the filer. Specifically, a service contract or amendment becomes effective at 12:01 a.m. on the beginning of the effective date. The effective date of the corresponding statement of essential terms cannot be prior to the filing date of the service contract or amendment with the Commission.

3. Expiration date. The expiration date is the last day,

after which the entire service contract is no longer in effect.

PART III -- ORGANIZATION RECORD AND REGISTER

A. Organization Record. The organization record is the master record for all service contract information in the system for a specific firm. Upon Commission acceptance of registration, a "shell" organization record, specific to the requestor, is established and contains the organization number, organization name and organization type. The firm's authorized representative can then access the newly established organization record, using the special access log-on ID and password to file the address for the firm's home office, and complete the affiliations, d/b/a, and publisher lists as appropriate. To maximize security of the data, maintenance (editing) of the organization record will be permitted only to the individual in the firm holding the special access log-on ID and password for organization record maintenance.

B. Service Contract Register. Each organization must create a service contract register ("register") prior to the filing of any service contracts or amendments thereto (and including "general rules" filings). The register is a directory subordinate to which service contracts and their amendments are filed. Each organization may create more than one register (e.g., according to location groups). Each register must include a record reflecting the filer's name, organization number and status (e.g. ocean common carrier/conference) which identifies the filer. At the option of

the filer, the register may also include the filer's service contract rules, i.e. the stated terms and conditions set by the carrier, agreement, or conference party to a service contract which govern the application of service contract rates, charges and other matters.

PART IV -- SERVICE CONTRACTS

As required by § 530.9, each service contract filed with the Commission shall include the following:

- A. Service Contract Title. The filer's title of the service contract (generally descriptive of the commodity and/or service).
- B. SC Number (Service contract number). The "SC Number" is defined by the filer and shall be entered in the appropriate field.
- C. ET Number (statement of essential terms number). The "ET Number" is defined by the filer and shall be entered in the appropriate field. (Note: Service contracts must have a new (unique to carrier/conference/agreement) service contract number for the initial filing. The service contract number must be paired with a unique essential terms number and the pair must remain constant for all amendments and must be consistent between the filed service contracts and the published essential terms documents.)
- D. Amendment Number. Where feasible, service contracts should be amended by amending only the affected specific term(s) or subterms. Each time any part of a service contract is amended, the filer shall assign a consecutive amendment number (up to three digits),

beginning with the number "1." (The amendment number field must be "0" or void for the initial filing). Each time any part of the service contract is amended, the "Filing Date" will be the date of filing of the amendment.

E. FMC File Number. The FMC File Numbers will be system-assigned as initial service contract filings are received and processed. The FMC File Numbers will be assigned sequentially and will start at a number designated by the FMC. The FMC File Number will be provided to filers in the acknowledgment message (via electronic mail) for filings.

F. Effective Date. The service contract must indicate the effective date and the expiration date governing the duration of the contract. The duration must also be set forth in Term No. 8 where the duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date).

G. Amendment Codes. All amendment codes listed in the Filing Guide, except "G" and "S", may be used in any combination, with up to three amendment codes for amendments.

H. Special case symbol and number. The "S" amendment code must be used singly, and in conjunction with a validated special case number for corrections to service contracts.

I. Filings Date. The filing date is automatically set by the system whenever a service contract or amendment thereto is filed.

J. Contract terms ("terms"). Terms Nos. 1 to 11 shall address the subjects and bear the terms' titles for the respective numbers

exactly as provided in this section. (Note: If a subject is not included, such as No. 12, the number must be listed with the appropriate title and the designation "NA." All terms may be subdivided into subterms to facilitate amendment).

1. Origin (No. 1). "Origin" includes the origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through intermodal movements, except that the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. Service contracts shall only employ locations (points) that are valid, published locations in the National Imagery and Mapping Agency ("NIMA") gazetteer and ports published or approved for publication in the World Port Index (Pub. No. 150).

2. Destination (No. 2). "Destination" includes the destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. Service contracts shall employ only locations (points) that are valid, published locations in the National Imagery and Mapping Agency ("NIMA") gazetteer and ports published or approved for publication in the World Port Index (Pub. No. 150).

3. Commodities (No. 3). Term No. 3 shall include commodities

covered by the service contract. For each commodity filed in this term, a separate formatted commodity index entry is required. To the maximum extent possible, service contracts should use the U.S. Harmonized Tariff Schedule ("US HTS") for commodity coding and associated terminology.

4. Minimum quantity or portion (No. 4). Term No. 4 shall address the minimum quantity or portion of cargo and/or amount of freight revenue necessary to obtain the rate or rate schedule(s). The minimum quantity or cargo committed by the shipper may be expressed as a fixed percentage of the shipper's cargo.

5. Service commitments (No. 5). Term No. 5 shall address the service commitments of the carrier, conference or specific members of a conference, agreement or specific members of an agreement, such as assured space, transit time, port rotation or similar service features.

6. Rates or rate schedule(s) (No. 6). Term No. 6 shall contain the contract rates or rate schedules, including any additional or other charges (e.g., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges.

7. Liquidated damages for non-performance, if any (No. 7). Term No. 7 shall include liquidated damages for non-performance, if there is such provided for in the service contract.

8. Duration of the contract (No. 8). The duration of the contract shall be stated as a specific, fixed time period, with a

beginning date (effective date) **and** ending date (expiration date).

9. Signature date, contract parties, signatories and affiliates, if any (No. 9). The identification of contract parties must be included as follows:

- (a) the legal names and business addresses of the contract parties. (Note: if the service contract is entered into by an agreement or conference, this shall include the corresponding agreement number on file with the Commission);
- (b) the legal names, titles, and addresses of representatives signing the contract for the parties and the date the contract was signed; and
- (c) the legal name(s) and business address(es) of affiliates entitled to access the contract, if any. Subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association, etc.).

(Note: This term must name every affiliate of each contract party named under § 530.9(d) (4) entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by all of the parties of a conference, agreement or shippers' association, individual members need not be named unless the contract includes or excludes specific members.)

10. Shipper's Status Certification and Affiliates, if any.

(No. 10). The shipper signatory(ies) must certify its status and that of any affiliates in accordance with § 530.7 of this part.

11. Records (No. 11). Term No. 11 must contain:

(a) a description of the shipment records which will be maintained to support the contract; and

(b) the address, title, and telephone number of the person who will respond to a request by making the original signed service contract and shipment records available to the Commission for inspection under § 530.17 of this part.

12. Other Provisions of the Contract (No. 100-999). Any term of a service contract not otherwise specifically provided for in this section shall be entered after the above terms and in numerical order, beginning with No. 100.

PLEASE TYPE OR PRINT

SERVICE CONTRACT REGISTRATION

(SEE ATTACHED INSTRUCTIONS)

1. This Registration is: ☐ Initial ☐ Amendment (Specify change) _____

2. Registrant

Full Legal Name of firm (or individual, if not a firm)

(Doing Business As)

3. Address of
Home Office

(Number and Street)

Telephone

(Number and Street)

Fax

(City/State/Country)

(Federal TIN Number)

E-Mail (optional)

4. Billing
Address If
Different

(Number and Street)

Telephone

(Number and Street)

Fax

(City/State/Country)

E-Mail (optional)

5. Organization Number (If known) _____

6. Registrant Type ☐ VOCC ☐ Tariff Publisher/Agent/Other
(Check one) ☐ Agreement ☐ Conference/Joint Service

7. Permissions Requested and Person granted these permissions (Check permissions that apply)

Full Legal Name

☐ Maintenance of organization record

☐ File Service Contracts

Registered for Batch Filing Prior to May 1, 1999? (Y/N) If Yes, show date _____
If the person to perform the filing already has an existing Log-on, list only the Log-on for that person.

Existing Log-on _____

Signature of Authorized Official

Print or Type name of Authorized Official

date

FMC USE ONLY

Logon Initial Password ID Directory

Date Asg / / Asg

EXHIBIT 1 -- INSTRUCTIONS FOR SERVICE CONTRACT REGISTRATION [FORM FMC-83]

Instructions

Line 1. Registration. Indicate whether this is the initial (first time) registration or an amendment to an existing Service Contract Registration.

Line 2. Registrant. This must be the full legal name of the firm or individual registering for the FMC's Service Contract Filing System and any trade names. The registrant name should match the corporate charter or business license, conference membership, etc. It should be noted that the registrant name cannot be changed by the registrant after the registration without submission of an amended registration fee.

Line 3. Address of Home Office. The complete street address should be shown in addition to the post office box. Also, provide the registrant's Federal Taxpayer Identification Number ("TIN" Number).

Line 4. Billing Address if Different. This should be completed if the billing address differs from the home office address. Show the firm name (if different from the registrant), street address and post office box (if applicable).

Line 5. Organization Number. Complete if known. (Regulated Persons Index or "RPI" number.)

Line 6. Registrant Type. Indicate the type of organization. A registrant cannot be more than one type. This data cannot be

changed by the registrant after registration without submission of an amended registration form.

Line 7. Permissions Requested and Person Granted These Permissions.

Maintenance of Organization Record - The person listed in line 8 is authorized to access the organization maintenance functions (i.e., modify organization information, assign publishers, affiliations, and d/b/as).

Service Contract Filing - The person listed in line 8 is authorized only to submit filings.

Line 8. Certified for Batch Filing. Indicate whether the registrant was registered with software certified to perform batch filings prior to May 1, 1999. Otherwise, the registrant must first be certified for batch filing as outlined in 46 CFR part 530. After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing log-on, the log-on (not the password) should be listed on the requesting form. Also, the certification date received from the FMC should be listed on the requesting form.

By the Commission.


Joseph C. Polking
Secretary

These attachments are found in Section 14.6.1 of the rulemaking record. At a minimum, EPA requests that capital costs be broken down in terms of treatment system equipment costs, installation costs, delivery costs, accessory costs (e.g., probes), instrumentation, piping, contractor fees, pumps, construction of buildings or other structures to house major treatment units, and engineering costs. EPA requests that annual costs be broken down into the following components, if available: chemical costs, electric costs, operation and maintenance (O&M) labor costs, O&M material costs, and residual disposal costs. EPA also requests that general data pertaining to the commenter's facility be supplied. This includes a detailed description of the treatment system (average operating days per year and hours per day, treatment system unit descriptions and capacities, average wastewater flows in and out of treatment units, chemical addition type and location) and general reduction data for the facility (in & total annual production and a breakdown of annual production by item type).

F. Pollution Prevention Activities

EPA proposed a no regulation option at the time of proposal. If EPA decides to go forward with the no regulation option, EPA may require specific pollution prevention/reduction activities to be implemented at industrial laundry facilities. EPA is soliciting information on in-process pollution prevention activities designed to minimize the level of pollutants in the influent at industrial laundries. Commenters should provide a description of the pollution prevention activity and information on the pollutant reduction due to implementation of this practice.

EPA also solicits comment on whether a best management practice (BMP) option, in lieu of an end-of-pipe regulation using any of the previously identified options controlling organic compounds, should be promulgated. This option would require control of organic solvents prior to the wash cycle by treating industrial towels only. In this case, the BMP could specify a certain technology (e.g., centrifuges, hydraulic presses, mechanical wringers) in lieu of a performance standard and could be used in conjunction with the industry's proposed voluntary program.

G. Space Limitations and New Building Costs for Industrial Laundries

EPA received several comments indicating that space requirements and expansion costs for industrial laundries

were underestimated. EPA is soliciting comments and data from industrial laundry facilities that in the past five years have installed pretreatment equipment that required them to either purchase additional land and/or construct a building to house pretreatment equipment. For facilities that purchased additional land to install pretreatment equipment, please provide information on the amount of land purchased, the cost of the land, and the location of the facility. For facilities that constructed buildings to house pretreatment equipment, please provide a detailed description of the building (including size, construction materials, and any additional uses of the building) and a detailed cost breakdown (including construction costs, secondary containment costs, HVAC costs, etc.).

H. Alternative Approach to "No Regulation" Option

EPA has received from UTSA and TRSA a proposal that would serve as an alternative to the pretreatment standards proposed by EPA. This document, which is available in Section 16 of the public record for this rulemaking, outlines a voluntary multi-media environmental improvement and pollution prevention program. The program contains five elements: (1) The establishment of industry-wide program goals; (2) a statement of environmental principles; (3) a menu of specific voluntary initiatives; (4) an implementation plan; and (5) a system for assessing program performance. EPA solicits comment on whether this program or some combination of elements of this program should take the place of the final rule, or be part of an option for those facilities excluded from numeric standards based on some sort of size cutoff to embark upon in place of complying with standards contained in the final rule. EPA has also received comments supporting EPA to go forward with the promulgation of pretreatment standards for this industry. These comments can be found in Section 14 of the record.

Dated: December 16, 1998.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 98-34037 Filed 12-22-98; 8:45 am]

BILLING CODE 5560-50-P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 530

[Docket No. 98-30]

Service Contracts Subject to the Shipping Act of 1964

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") proposes to revise its regulations governing service contracts between shippers and ocean common carriers to reflect changes made to the Shipping Act of 1984 ("1984 Act"), the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998). Specifically, the Commission proposes to revise its regulations implementing section 8(c) of the 1984 Act and create a new regulation which would govern only service contract filings. The Commission is proposing to establish new rules for service contract filing and essential terms publication, revise its regulations to include the newly permitted agreement and multiple shipper-party service contracts, and make other conforming changes. The Commission is also proposing an electronic filing system for service contracts which is intended to reduce the filing burden on parties and accommodate the efficient processing and review of what is predicted to be a large number of filed contracts.

DATES: Submit comments on or before January 22, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT:

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5740

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5796

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998, Pub. L. 105-258, 112 Stat. 1902 ("OSRA") was signed into law on October 14, 1998. OSRA makes several changes to the existing system by which the Federal Maritime Commission ("FMC" or "Commission") regulates ocean shipping in the foreign commerce of the

United States. OSRA makes significant changes to the provisions governing service contracts under the 1984 Act. On November 13, 1998, the Coast Guard Authorization Act of 1998, Pub. L. 105-383, 112 Stat. 3411, was signed by the President. That Act also amends the 1984 Act by redefining the term "common carrier." Accordingly, the Commission now proposes to update, redesignate and clarify its rules to implement the changes mandated by these laws. This supplemental information presents these changes in detail.

The proposal seeks to carry over existing regulations (particularly 46 CFR 514.7 and 514.17) where they comport with the revisions to the 1984 Act made by OSRA and where they represent a sound approach. The purpose, scope, applicability and definition sections, found in proposed regulations §§ 530.1, 530.2, 530.3 and 530.4 are adapted from current §§ 514.1(b) (p-se), 514.1(a) (scope) and 514.2 (definitions). These proposed rules envision an electronic filing system for service contracts, and coordinate the publication of essential terms under section 8(c) of the 1984 Act with the publication of tariffs under proposed regulation 46 CFR part 520.

OSRA fundamentally revises the statutory scheme for tariffs and service contracts. Tariffs are no longer required to be filed with the Commission. Service contracts, on the other hand, are required to be filed confidentially with the Commission, and must contain specified essential terms. Similarly, while OSRA preserves the requirement that certain essential terms be published, that requirement has been significantly scaled back and includes only the following terms: (1) Origin and destination port ranges; (2) the commodity or commodities involved; (3) the minimum volume or portion; and (4) the duration of the service contract. Just as significant to service contracting is the repeal of the "me-too" right for similarly situated shippers. Carriers will no longer be required to offer the same contract terms to similarly situated shippers.

Another significant change made by OSRA is the authorization of non-conference ocean common carrier agreements to enter into service contracts. Furthermore, under OSRA, unrelated, multiple shippers may enter into service contracts without necessarily being members of shippers' associations. These changes significantly free parties to make service contracts centered around the realities of the marketplace.

The Commission is mindful of several competing interests regarding the filing

of service contracts. First, the filing requirements must be crafted with an appreciation for regulated entities' interests in simple, speedy and straightforward filing procedures. Second, they must enable the Commission to fulfill its statutory duty to guard against section 10 violations and section 6(g) matters. This responsibility on the part of the Commission is especially important now that service contracts will be confidential; potentially aggrieved parties will rely on Commission oversight. This will be complicated by the predicted increase in the sheer number of service contracts filed. It is with these goals in mind that the Commission proposes the following regulations, designed to enable the Commission to fulfill its regulatory mandate while imposing a minimal burden on regulated parties.

The Proposed Rule

The proposed rule redesignates the Commission's rules on service contracts currently in 46 CFR part 514 into a new part, 46 CFR part 530. The following discussion covers the proposed rule's treatment of service contract filings; essential terms publications; carrier duty to disclose to collective bargaining agreements; confidentiality; excepted commodity ("mixed") and global contracts; re-rating; and miscellaneous matters.

General filing requirements

Filing requirements in the existing regulations (46 CFR part 514) as well as in the proposed regulations, govern initial filings, amendments, and notices of correction and cancellation. In an attempt to update and streamline the filing system, as well as enable the Commission to fulfill its statutory monitoring duty over service contracts, the Commission is proposing to initiate a filing system which would be completely electronic. Due to the volume of service contract filings the Commission expects after May 1, 1999, adoption of an electronic, as opposed to a paper-based, system appears to be the most practical approach.

Given the exceptionally short legislative deadlines and limitations on resources available to the Commission, the only viable approach to implementing an electronic filing system at this juncture would be to create a system adapted from the Commission's currently used filing system for the Essential Terms ("ETs") of service contracts. The proposed rule reflects this approach. It envisions accepting only electronic filings (including amendments to service

contracts filed prior to May 1, 1999); amendments to paper-filed service contracts would also necessitate the re-filing in electronic form of the underlying, i.e. initial, contract itself.

While the creation of an entirely new, tailor-made service contract filing system could have benefits over the proposed approach in terms of simplicity or flexibility, the creation of such a new system simply is not possible before May 1, 1999. The Commission invites comments on approaches to establishing such a new system, however, and if warranted and financially feasible could pursue such a strategy as a longer-term goal, treating the proposed system as a transitional solution.

The Commission has determined not to propose continuing the paper filing of service contracts, based on an assessment that an increased volume of contracts would create unworkable administrative burdens on both the industry and the agency and could substantially impair the Commission's ability to fulfill its oversight, enforcement, and monitoring responsibilities. However, commenters are welcome to address this matter as well.

The proposed regulation includes the details of this system. See, § 530.9 and Appendix A. The Commission solicits from the industry its views on the benefits and limitations of this approach and any suggested alternatives.

Registration of filers

The proposed rule carries over the existing filing fees for service contract and amendment filings, and for corrections to service contracts. Also, a provision has been made to "grandfather" organizations currently registered to file essential terms publications, with no requirement that they submit a further registration fee. All individuals who presently possess an organization maintenance log-on be issued a new log-on and password for the new system. All other potential service contract filers must pay the requisite fee and be registered for service contract filing prior to filing service contracts. The proposed rule would also "grandfather" software which was certified by the old system but would allow software providers to test their filing software if they so desired for the same certification fee.

Publication of essential terms

OSRA continues to require the publication of certain essential terms of service contracts. Section 8(c)(3) instructs carrier parties to service contracts to make these essential terms

available to the public "in tariff format." The proposed regulation suggests that carriers and conferences should be able to satisfy this obligation in the same way they publish their tariff information under proposed 46 CFR part 520.

Comments are solicited on any other options which might also be feasible and which would affect compliance with the publication requirement of the Act.

In an effort to assist the shipping public find statements of essential terms published according to this part, the Commission anticipates making a list of the locations of all such publications available on the FMC website. 46 CFR 530.13(f). The Commission requests comments this proposal.

OSRA removes the requirement that carriers and conferences provide "me-too" rights to similar situated shippers on their service contracts. Similarly, OSRA no longer requires carriers and conferences to publish most of the essential terms of service contracts filed with the Commission. It appears that allowing carriers and conferences to publish their (non-confidential) essential terms by the same method they publish their tariffs is the most efficient approach to the publication requirement. Therefore, the proposed rule cross-references the technical requirements of the newly proposed tariff publication regulations to effectuate the essential terms publication required under this part.

Agreements and service contracting

Commission regulation governing the filing of individual carrier and conference service contracts remains, for the most part, the same as it had been under previous Commission regulation. However, there has been one significant change by OSRA: The additional authority for an "agreement" (as opposed to only a "conference") to enter into service contracts. This raises several issues which the Commission will address in this rulemaking.

Often, non-conference agreements do not create a central secretariat or authority to act on the agreement's behalf, nor do they maintain a common tariff. Unlike conferences, therefore, such agreements may have no uniform or standard method for filing or publishing the agreement service contract matters.

With regard to non-conference agreements, the proposed rule indicates

that any of the agreement parties to the service contract may file; if none of the parties properly files, the liability for such failure to file would rest equally on all agreement members party to the contract.

The question arises of how to require publication of statements of essential terms by agreements which do not have a common tariff. The proposed rule requires that each member of a non-conference agreement publish the statement of essential terms in its individual tariff, and reflect in its statement of essential terms the identity of the other carrier parties. 46 CFR 530.13(b). The Commission welcomes any comments as to alternative approaches by which non-conference agreement carriers may satisfy the publication requirement of section 8(c)(3) of the Act as revised by OSRA.

A similar issue arises with the Commission's policy regarding the filing by conferences of service contracts to which fewer than all members are parties. In the past, the Commission's policy has been to impose on the conferences the duty to file and publish the service contract material for service contracts entered into under the conference agreement, in which fewer than all the members would participate. 46 CFR 514.4(d)(5)(B). For service contracts outside the scope of the conference, the conference retained the authority to file on behalf of its member(s), but the carrier(s) involved also had a separate duty to file. 46 CFR 514.4(d)(5)(B)(2)(ii).

It appears necessary to revisit these policies at this time. A requirement that conferences file service contracts entered into by a subset of its membership would seem inconsistent with OSRA's new prohibition on agreement members being required to disclose the terms of their contracts, as well as other provisions regarding independent and confidential service contracting. Therefore, we are proposing that, for filing and publication purposes, contracts entered into by some, but not all, of a conference's members be treated in the same manner as non-conference agreement contracts. 46 CFR 530.5, 530.13.

Finally, the Commission must resolve how to handle re-rating issues which might arise under non-conference agreement service contracts. By definition, agreements do not have common tariffs at which carriage under a terminated or canceled contract could be re-rated. Therefore, if a service contract is rejected for not meeting the filing requirements, deadlines, etc., the issue of which rate should be applied to cargo which moved under that contract

presents itself. One approach to this problem would be to re-rate the cargo at the tariff rate for that commodity of the carrier which actually moved the cargo. 46 CFR 530.16. While this is the approach presented in the proposed regulations, the Commission is interested to hear any others which might be suggested in the comments.

Duty to Disclose to Labor Organizations

In light of the confidentiality of service contracts and some of their essential terms, OSRA amends section 8(c)(4) to require that a carrier which is a party to or is subject to a collective bargaining agreement with a labor organization must respond within a reasonable period of time to that labor organization's request regarding the carrier's responsibility for certain activities related to cargoes transported under a service contract. The Commission is proposing, at 46 CFR 530.8, certain definitions of "reasonable period of time" for responding to a labor organization's request for information under section 8(c)(4) of the Act. This definition reflects the concern that labor organizations are apprised of the handling responsibility for cargo before that cargo arrives at the discharge port. The Commission expects that aggrieved labor organizations will use existing Commission processes in the event of noncompliance by a carrier. The Commission would entertain proposals for more specific and stringent rules if the existing standards and procedures prove inadequate in practice.

Commission Confidentiality

Proposed regulation 46 CFR 530.4 seeks to amend the confidentiality provision as follows: "Nothing contained in this part shall preclude the Commission from providing certain information from service contracts to another agency of the Federal government of the United States as deemed necessary." Other federal agencies, in the administration of their statutorily mandated responsibilities, may have a need for service contract information which will otherwise be filed confidentially with the Commission and which under the existing 1984 Act is disclosed in the published essential terms statement. In an April 1, 1998 floor statement, the Senate bill's sponsor, Senator Hutchinson, noted that

Federal agencies have expressed concerns over how they are to ensure ocean carrier compliance with United States cargo preference law requirements concerning shipping rates in an era of service contract rate confidentiality. The FMC is encouraged

¹ Indeed, while the statute speaks of "carrier or an agreement" entering into a contract, in instances where the agreement is not a distinct legal entity, the Commission anticipates that it is the multiple carrier members, rather than the agreement itself, who would be signatories to such a contract.

to work with affected Federal agencies to address this concern

Cong. Rec. S3320, (daily ed. April 21, 1998) (statement of Sen. Hutchison). Similarly, in an October 1, 1998 floor exchange, the Chairman of the Senate Committee on Commerce, Science and Transportation, Senator McCain, asked Senator Hutchison

to clarify the ability of the FMC to share confidential service contract rate and service information with other Federal agencies to ensure that the U.S.-fleet shipping rates for preference cargo shipments meet statutory requirements.

Cong. Rec. S11302 (daily ed. Oct. 1, 1998) (Statement of Sen. McCain). Senator Hutchison replied,

... I want to make it clear that the FMC is authorized to share with another Federal agency service contract information that parties of the service contract have legally decided to protect from public disclosure in order to enable that Federal agency to ensure the compliance of U.S.-flag ocean common carriers with cargo preference law shipping rate requirements. Of course, that confidential service contract information would remain protected from disclosure to the public consistent with the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, and other applicable Federal Laws.

Cong. Rec. S11302 (daily ed. Oct. 1, 1998) (Statement of Sen. Hutchison). Thus, it is clear that the confidentiality afforded to service contract information is limited to nondisclosure to the public, and was not intended by Congress to fetter other Federal agencies in their oversight responsibilities.² It is therefore the intention of the Commission to allow access to filed contracts to Federal government agencies where appropriate; any such disclosures will not jeopardize the statutory aim of nondisclosure of confidential service contract information to nongovernmental entities.

Service Contracts With NVOCCs as Shipper Parties

Service contracts with non-vessel-operating common carriers ("NVOCCs") remain subject to special requirements for certification of NVOCCs' financial responsibility. See 46 CFR 514.7(e) and 46 CFR 530.7. The financial responsibility procedures in this proposed rule comport with the proposed regulation at 46 CFR § 515.27

²With respect to Department of Defense cargo preference law oversight, moreover, it also appears that the Federal Acquisition Regulations, 46 CFR 9.104-1(g), 9.105-1(c)(3), 15.404-1(a)(1), and 15.403-3(a), would provide the Department access to the service contract information in any event, although in a less efficient and more cumbersome manner.

(dealing with financial responsibilities of ocean transportation intermediaries).

Exceptions and Rejection

Congress has directed the Commission to refuse to accept any service contract dealing with commodities excepted from application by section 8(c)(2) or receiving an exemption under section 16 of the 1984 Act. S.Rep. No. 105-61, 105th Cong. 1st Sess., at 23 (1997) ("Report"). The Commission proposes to continue to permit the filing of service contracts which include both excepted and non-excepted commodities ("mixed" contracts), in lieu of requiring the parties to rewrite their contracts to separate excepted and non-excepted commodities for filing purposes. Therefore, the Commission seeks comments on proposed regulation 46 CFR 530.14, particularly regarding the burden that would result to filers if service contracts were required to be drafted specifically so that excepted commodities were not covered. The proposal indicates that the Commission would refuse to accept for filing service contracts which exclusively cover excepted commodities, in keeping with the Report language.³

Global Service Contracts

Members of the carrier industry have suggested that the Commission should accept filings of service contracts which include terms covering both U.S.-to-foreign and foreign-to-foreign movements of cargo (hereinafter "global contracts"). Clearly, the foreign-to-foreign activity lies outside the Commission's jurisdiction to regulate. This issue was before the Commission previously in Docket No. 92-20, *Service Contracts in Foreign-to-Foreign Trades*, Advance Notice of Proposed Rulemaking, 57 Fed. Reg. 18855 (May 1, 1992). That proceeding was discontinued, as carriers, conferences and shippers' associations strongly opposed the proposal to allow the filing of global service contracts. In their comments in that proceeding, several

carriers and conferences noted that there was no business efficiency reason to allow the filing of global service contracts as "there was no commercial need" for the ability to do so. In contrast, several large shippers expressed their desire to have the ability to enter into global service contracts and to thereby simplify and aggregate their traffic and logistics operations.

Many commenters in that proceeding suggested that global contracting would severely interfere with or complicate "me-too" rights. Furthermore, the National Customs Brokers and Forwarders Association of America stated that allowing such global contracts would give rise to discrimination in favor of large global shippers that could commit to larger worldwide volumes. However, Congress has eliminated the Commission's mandate to guard against unreasonable discrimination (except with regard to clearly defined protected classes), retooling the Act to place more emphasis on individual contracting and the marketplace.

There remains a concern, however, that allowing global service contracts, in which rates in U.S. trades will depend on minimum volume commitments calculated on a global basis, will complicate the Commission's ability to monitor and enforce carriers' compliance with their filed contract rates. While there is merit to this point, the legal obstacles do not appear to be insurmountable. There is no bright-line geographic limit to the Commission's ability to compel information from carriers. Rather, information sought must be "not unreasonable" and "reasonably relevant" to a law & Commission inquiry. *United States v. Morton Salt Company*, 338 U.S. 632 (1950); *Far East Conference v. Federal Maritime Commission*, 337 F.2d 146 (D.C. Cir. 1964). Therefore, if information about the volumes moving in foreign-to-foreign commerce is relevant to the question of what rate applies in a U.S.-to-foreign trade (clearly a matter within the Commission's jurisdiction), then it would appear that such information may be compelled by the Commission. Moreover, we note that proper administration of certain sections of the 1964 Act, i.e., section 13(b)(5), redesignated as 13(b)(6) by OSRA, would seem to require that the Commission have the ability to compel information about cross-trades. However, as a practical matter, auditing arrangements with global quantities will undoubtedly generate substantial challenges.

Some of the objections in Docket No. 92-20 focused on whether global

³The Commission solicited comment on this subject in Docket No. 85-6, *Notice of Inquiry Concerning the Interpretation of Section 8(a) and (b)(c) of the Shipping Act of 1984*, as well as Docket No. 66-6, *Service Contracts in Docket No. 86-6*, the Commission issued its Final Rule, 52 FR 23969 (June 26, 1989), and noted that "service contracts often include a mixture of exempt and non-exempt commodities, so that a shipper can obtain a better contract rate. Presumably, the ability to offer service contracts on mixed commodities also benefits carriers." *Id.* at 23996 The Commission assumes that the same holds true for the shipping industry today, but solicits comment on industry practice and the burden which would be imposed if the Commission were to require that filed service contracts cover only non-excepted commodities.

volumes were consistent with the requirement for the filing of minimum volume commitments in public essential terms. While that issue was more important when parties had the right to "me-too" the terms, it still has some significance. The Commission proposes an approach that, when parties have a unitary minimum volume commitment covering U.S.-and foreign-to-foreign trades, it publish the amount in its public essential terms publication, but clearly indicate for the public that the volume includes quantities moving in foreign-to-foreign trades.

Furthermore, the concerns that conferences and niche carriers had in 1992 may have disappeared completely with the ability of n&-conference agreements to enter into service contracts. Under OSRA, alliances, along with individual carriers, will have the ability to offer global service contracts. This ability, of course, will also be affected by the Commission's approach on the treatment of less-than-total agreement service contracts, as discussed more fully above.

Another question raised in Docket 92-20 was whether filing of global contracts would somehow extend other provisions of the Act, such as the prohibited acts in section 10, to the foreign-to-foreign legs. It is clear, however, that there would be no authority for the Commission to spontaneously extend its jurisdiction in this manner. Therefore, it appears that there is little policy or legal necessity to require parties to artificially structure their commercial dealings to be coextensive with the Commission's regulatory jurisdiction. Rather, a more sound approach would seem to be for carriers to enter into contracts based on the requirements of the global market, for carriers to submit them in their true and complete totality, and for the Commission to regulate those carriers, their agreements and service contracts to the extent of its authority, and not beyond.

It appears that the significant revisions to the 1984 Act necessitating sweeping changes to the service contract filing regulations, make this proposed rulemaking proceeding an opportune moment for the Commission to revisit the issues presented by the acceptance of filing for both mixed and global contracts. In light of the regulatory changes mandated by OSRA, the current proposal seeks to reduce the burden on the entities subject to the section 8(c) filing and publication requirements, together with recognition of the Commission's need to have the ability to easily access and search the filed documents. Thus, the proposed

regulation allows the filing of service contracts which include (but are not limited to) excepted and exempted commodities and service outside the U.S. foreign trades. The Commission is concerned that it not overburden its filers, or encourage them to create artificial documents which do not reflect the actual underlying business agreement which the service contract represents.

Inland Portions of Through Movements to Europe

Unlike the United States, it appears that the European Commission ("E.C.")-while permitting conference service contracts for the ocean movement of cargo-prohibits conference contracts which cover the movement of cargo to inland points in Europe. Therefore, it seems that carriers in the U.S.-European trade may participate in a conference service contract covering U.S.-Europe ocean movements, and sign an individual service contract covering European inland transport for the same shipper customer. A question has arisen as to whether these contracts for European inland transport must be filed with the Commission. It would seem that filing would be consistent with statutory requirements to the extent the contracts establish the European inland portion of a through rate charged by a carrier in a U.S.-Europe intermodal movement. However, the Commission welcomes comments on how it could minimize the regulatory burdens occasioned by these differences in regulatory regimes, to the extent it may do so given its own statutory responsibility.

Cross-Referencing Tariffs

Presently, most filed service contracts contain re-occurring terms common to all of a carrier's or conference's service contracts (including matters such as free time and demurrage, bunkering rates, currency matters, etc.) the complete text of which would be very cumbersome for the carrier party to file with the service contract. Therefore, service contracts almost always make cross-reference to terms contained in that carrier's or conference's tariff or an essential terms publication.

The Commission recognizes that it was Congress' intent, by lifting the requirement that tariffs be filed with the Commission, to allow parties to service contracts more freedom and flexibility in their commercial arrangements. The proposed rule, § 530.9(c)(2), thus permits filed service contracts to refer to terms outside the four corners of the filed service contract, but only if they

are contained in the carrier's or conference's tariff publication.

Another option for the system is to allow service contract filers to file with the Commission a "general rules" filing as a part of their service contract register. This might be useful for filers which file multiple service contracts with duplicative and/or commonly applicable items (e.g. rules for hazardous cargo, equipment interchanges, mileage guide publications, location groups, inland rates, and bills of lading); rather than repeatedly submitting the text of these amendments in each contract filing, filers could simply reference their "general rules" filing. This would also maintain the confidentiality of such terms. Filing and amendments to these "general rules" would be subject to the filing requirements of service contracts and amendments. The Commission wishes to hear how the industry views this issue and what options may be available for its resolution.

Rejection of Service Contract Filings

Commission regulations currently outline the procedures for rejection of service contracts and essential terms filed with the Commission. 48 CFR 514.7(j). The Commission rejects service contracts or their amendments which do not conform to the requirements of the 1984 Act or Commission regulation, including timeliness of filing and adequacy and accuracy of the publication of the statement of essential terms. The proposed regulation adapts the current rejection rules as necessary to meet the changes to the 1984 Act made by OSRA. The proposed regulations also provide for "non-acceptance," a new term reflecting the congressional mandate that the Commission not accept for filing service contracts which cover only excepted commodities, consistent with congressional directives.

The proposed regulations also anticipate re-rating for service contracts with non-conference agreements. Such re-rating will be made, under proposed regulation 48 CFR part 530 subpart E, at the tariff rate of the carrier which actually carried the cargo in question.

The definitions of ocean common carrier and conference are changed to reflect the concerns the Commission discussed in its proposed Agreements rulemaking. See, 46 CFR part 535.

The reporting requirements contained in 46 CFR part 530 have been submitted to the Office of Management and Budget (OMB). The estimated total annual burden for the estimated 155 annual respondents is 303,953 manhours. This estimate includes, as applicable, the

time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503 within 30 days of publication in the Federal Register.

The FMC would also like to solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record.

The Chairman certifies, pursuant to section 805 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed amendments will not, if promulgated, have a significant impact on a substantial number of small entities. The affected universe of the parties is limited to vessel-operating common carriers. The Commission has determined that these entities do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act as they typically exceed the threshold figures for number of employees and/or annual receipts to qualify as a small entity under Small Business Administration guidelines.

List of Subjects for 48 CFR Parts 534 and 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission proposes to remove 46 CFR part 514 and to add new 46 CFR part 530 to subchapter B to read as follows:

PART 514—[REMOVED]

PART 530—SERVICE CONTRACTS

Subpart A—General Provisions

Sec

- 530.1 Purpose
- 530.2 Scope and applicability
- 530.3 Definitions.
- 530.4 Confidentiality.
- 530.5 Duty to file.
- 530.6 Service contracts with NVOCCs.
- 530.7 Certification of shipper status
- 530.8 Duty to labor organizations.

Subpart B—Filing Requirements

- 530.9 Service contracts
- 530.10 Notices.
- 530.11 Amendment, correction, and cancellation.
- 530.12 Filing fees and other costs.

Subpart C—Publication of Essential Terms

- 530.13 Publication.

Subpart D—Exceptions

- 530.14 Exceptions.

Subpart E—Rejection

- 530.15 Contract non-acceptance, rejection and notice
- 530.16 Implementation, prohibition and rerating.

Subpart F—Recordkeeping and Audit

- 530.17 Recordkeeping and audit.

Appendix A to Part 530—Instructions for the Filing of Service Contracts

Exhibit 1 to Part 530—Filer Registration Form and Instructions

Authority: 46 U.S.C. App. 1704.1705, as amended by Pub. L. 105-258, 112 Stat. 1802.

Subpart A—General Provisions

§ 530.1 Purpose.

The purpose of this part is to facilitate filing of service contracts and publication of certain essential terms of those service contracts as required by section 8(c) of the Shipping Act of 1984 ("Act"). This part enables the Commission to review service contracts to ensure that these contracts and the parties to them comport to the requirements of the Act. It is also the purpose of this part to implement electronic filing provisions for service contracts to facilitate compliance and minimize the burden on the oceanborne commerce of the United States.

§ 530.2 Scope and applicability.

An individual ocean common carrier or an agreement between or among ocean common carriers may enter into

a service contract with one or more shippers subject to the requirements of the Act.

§ 530.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998.

(b) *Agreement* means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof which has been filed and effective under 46 CFR part 535 with the Federal Maritime Commission. The term does not include a maritime labor agreement.

(c) *Authorized person* means a carrier itself or a duly appointed agent thereof who is authorized to file service contracts on behalf of the carrier party to a service contract and to publish the corresponding statement of essential terms and registered by the Commission to file under § 530.5(d) and appendix A of this part.

(d) *BTCL* means the Commission's Bureau of Tariffs, Certification and Licensing or its successor bureau.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(f) *Conference* means an agreement between or among two or more ocean common carriers which provides for the fixing and adherence to uniform tariff rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; but the term does not include joint service, consortium, pooling, sailing, or transshipment agreements.

(g) **Controlled carrier** means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) A majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(h) **File or filing** (of service contracts or amendments thereto) means use of the Commission's electronic filing system for receipt of a service contract or amendment and the recording of its receipt.

(i) **Labor agreement** means a collective-bargaining agreement between an employer subject to the Act, or group of such employers, and a labor organization or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group, but the term does not include an assessment agreement.

(j) **Ocean common carrier** means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or a chemical parcel tanker.

(k) **Non-vessel-operating common carrier** ("NVOCC") means an ocean transportation intermediary as defined by section 3(17)(B) of the Act.

(1) **Service contract** means a written contract between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers, in which the shipper makes a commitment to

provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the individual ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as, assured space, transit time, port rotation, or similar service features. The contract may also specify

provisions in the event of nonperformance on the part of any party

(m) **Shipper** means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made; a shippers' association, or an NVOCC that accepts responsibility for payment of all applicable charges under the service contract.

(n) **Statement of essential terms** means a concise statement of the essential terms of a service contract required to be published under § 530.13 of this part

§ 530.4 Confidentiality.

All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence. Nothing contained in this part shall preclude the Commission from providing certain information from or access to service contracts to another agency of the Federal government of the United States.

§ 530.6 Duty to file.

(a) **Generally.** The duty under this part to file service contracts and notices, and to publish statements of essential terms shall be upon the carrier party or conference which is the signatory to the service contract.

(b) **Agreements.** A service contract entered into by all members of a non-conference agreement may be filed by any member of that agreement, as the carrier parties may so designate. Signatories to a service contract required to file a service contract under this part shall be jointly and severally liable for a failure to file the service contract.

(c) **Conferences.**—(1) The duty to file shall be upon the conference for service contracts entered into by a conference on behalf of its full membership.

(2) A service contract entered into by fewer than all the members of a conference may be filed by any participating carrier, as the participating carriers may so designate. Signatories to a service contract required to file a service contract under this part shall be jointly and severally liable for a failure to file the service contract.

(d) **Registration.**—(1) **Application.** Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier party in writing, by submitting to BTCL the Registration Form in Exhibit 1 to this part and the appropriate fee as defined under § 530.12.

(2) **Approved registrations** BTCL shall grant Registrants with software certified by BTCL a log-on ID and password for filing and amending service contracts

(3) **Software certification** Certification of software may be requested by appointment through the Commission's Office of Information Resources Management ("OIRM") and payment of the appropriate fee as set forth in § 530.12. OIRM will test the software as set out in appendix A to this part. Organizations certified prior to May 1, 1999 for the batch filing of "Essential Terms Publications" ("ETs") in the Commission's former "Automated Tariff Filing Information System" ("ATFI") are not required to recertify their software but may if they so choose using the same procedure as for initial certification.

(4) **Emergencies.** In an emergency, a person, already authorized to maintain and edit its firm's organization record under appendix A to this part, may change a "publisher" under Appendix A to this part, verbally notify BTCL, and promptly submit the proper documents.

(5) **Prior registration and certification.** Each organization registered to file essential terms publications before May 1, 1999 will be issued a log-on ID and password for access to file service contracts under the Commission's electronic filing system.

§ 530.6 Service contracts with NVOCCs.

No ocean common carrier or agreement among ocean common carriers may execute or file any service contract in which a contract party, an affiliate of such contract party, or a member of a shippers' association, entitled to receive service under the contract, is an NVOCC, unless such NVOCC has a published tariff and proof of financial responsibility as required by sections 8 and 19 of the Shipping Act of 1984 and Commission regulations under this part, and 46 CFR parts 515 and 520.

§ 530.7 Certification of shipper status.

(a) **Certification** The shipper contract party shall sign and certify on the signature page of the service contract its shipper status (e.g., owner of the cargo, shippers' association, NVOCC, or specified other designation), and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the contract.

(b) **Proof of tariff and financial responsibility.** If the certification completed by the contract party under paragraph (a) of this section identifies the contract party or an affiliate or member of a shippers' association as an

NVOCC, the ocean common carrier, conference or agreement shall obtain proof that such NVOCC has a published tariff and proof of financial responsibility as required under sections 8 and 19 of the 1984 Act before signing the service contract. An ocean common carrier, conference or agreement can obtain such proof by the same methods prescribed in § 515.27 of this chapter.

(c) *Joining shippers' association during term of contract.* If an NVOCC joins a shippers' association during the term of a service contract and is thereby entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier, agreement or conference the proof of compliance required by paragraph (b) of this section prior to making any shipments under the contract.

(d) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier, agreement or conference executing a service contract shall be deemed to have complied with section 10(b)(12) of the Act upon meeting the requirements of paragraphs (a) and (b) of this section, unless the carrier party had reason to know such certification or documentation of NVOCC tariff and bonding was false.

§ 830.8 Duty to labor organizations.

(a) In response to a written request transmitted from a labor organization with which it is a party or is subject to the provisions of a collective bargaining agreement with a labor organization, an ocean common carrier shall state, within a reasonable period of time, whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transported under a service contract:

(1) The movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within a port area;

(2) The assignment of intraport carriage of the shipper's cargo between areas on a deck or within the port area;

(3) The assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; or

(4) The assignment of container freight station work and maintenance and repair work performed at a dock area or within the port area.

(b) *Terms.* (1) For the purposes of this section, the terms *dock area* and *within the port area* shall have the same meaning and scope as defined in the applicable collective bargaining agreement.

(2) For the purposes of this section, a *reasonable period of time* means

(i) if the cargo in question is due to arrive in less than five (5) days from the date of receipt of the request as defined in paragraph (a) of this section, two (2) days from the date of receipt of the request; but

(ii) If cargo in question is due to arrive in more than five (5) days from the date of receipt of the request as defined in paragraph (a) of this section, four (4) days from the date of receipt of the request.

(3) For the purposes of this section, *movement* includes, but is not necessarily limited to, the normal and usual aspects of the loading and discharging cargo in containers; placement, positioning and re-positioning of cargo or of containers; the insertion and removal of cargo into and from containers; and the storage and warehousing of cargo.

(4) For the purposes of this section, *assignment* includes, but is not limited to, the carrier's direct or indirect control over the parties which, the manner by which, or the means by which the shipper's cargo is moved, regardless of whether such movement is completed within or outside of containers.

(5) For the purposes of this section, *transmit* includes first-class mail, by facsimile, by telegram, hand-delivery, or electronic mail ("e-mail").

(c) *Applicability.* This section requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier.

(d) *Disclosure not deemed admission or agreement.* No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement.

(e) *Dispute resolution.* Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this section.

(f) *Jurisdiction and lawfulness.* Nothing in this section has any effect on the lawfulness or unlawfulness under the Shipping Act of 1984, the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, the antitrust laws, or any other federal or state law, or any revisions or amendments thereto, of any collective bargaining agreement or element

thereof, including any element that constitutes an essential term of a service contract under section 8(c) of the Act.

Subpart B-Filing Requirements

§ 530.9 Service contracts.

(a) Authorized persons pursuant to § 530.5 of this part shall file electronically, in the manner set forth in appendix A to this part, with BTCL a true and complete copy of every service contract before any cargo moves pursuant to that service contract, and as specified by this part.

(b) Every service contract filed with the Commission shall include the complete terms of the contract, including, but not limited to, the following:

(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume of portions;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration;

(9) The legal names and business addresses of the contract parties; the legal names of affiliates entitled to access the contract; the names, titles and addresses of the representatives signing the contract for the parties; and the date upon which the service contract was signed. An agreement service contract must identify the FMC Agreement Number(s) under which the service contract is filed. Carriers, conferences and/or agreements which enter into contracts that include affiliates must in each instance either:

(i) List the affiliates' business addresses; or

(ii) Certify that this information will be provided to the Commission upon request within ten (10) business days of such request. However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates. Subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.);

(10) A certification of shipper status in accordance with § 530.7;

(11) A description of the shipment records which will be maintained to

support the contract and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 530.17; and

(12) All other provisions of the contract

(c) *Certainty of terms.* The terms described in paragraph (b)(1)-(5) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly detailed in the service contract filing itself, unless those terms are contained in a tariff publication in accordance with the requirements of 46 CFR part 520.

(d) *Other requirements.* Every service contract filed with BTCL shall also include, in the manner set forth in appendix A to this part:

(1) A unique service contract number, and consecutively numbered amendment number, if any, of more than one (1) but less than ten (10) alphanumeric characters in length ("SC Number"); and

(2) A number of more than one (1) but less than ten (10) alphanumeric characters in length which is the same number assigned to the filer's publication of statement of essential terms ("ET Number").

§ 530.10 Notices.

(a) *Notice to the Commission.* Within 10 days of the occurrence of any event listed below, there shall be filed with the Commission, pursuant to the same procedures as those followed for the filing of an amendment pursuant to § 530.11 and appendix A to this part, a detailed notice of:

(1) Correction (clerical or administrative errors);

(2) Cancellation;

(3) Termination by mutual agreement, breach or default not covered by the service contract;

(4) Adjustment of accounts, by rerating, liquidated damages, or otherwise under § 530.96;

(5) Final settlement of any account adjusted as described in § 530.16; and

(6) Any change to:

(i) The name of a basic contract party; or

(ii) The list of affiliates, including changes to legal names and business addresses, of any contract party entitled to receive or authorized to offer services under the contract.

(b) *Notice to contract party.* A proposed final accounting or rerating shall be issued to the appropriate contract party within 60 days of termination, discontinuance, breach or default of the service contract, for:

(1) Liability for liquidated damages provided for by the service contract; or

(2) Termination, breach or default not covered by the contract

§ 530.11 Amendment, correction, and cancellation.

(a) *Amendment* Service contracts may be amended by mutual agreement of the parties to the contract and shall be filed electronically with the Commission in the manner set forth in § 530.9 and appendix A to this part.

(b) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission, accompanied by remittance of a \$233 service fee, and shall include:

(1) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected;

(2) A paper copy of the proposed correct terms. Corrections shall be indicated as follows:

(i) Matter being deleted shall be struck through; and

(ii) Matter to be added shall immediately follow the language being deleted and be underscored.

(3) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(4) Documents supporting the clerical or administrative error; and

(5) A brief statement from the other party to the contract concurring in the request for correction.

(6) If the request for correction is granted, the carrier, agreement or conference shall file the corrected contract provisions using a special case number as described in appendix A to this part.

(c) *Cancellation.*-(1) *Events anticipated by the contract; rerating.* An account may be adjusted for events and damages covered by the service contract. This shall include adjustment necessitated by either liability for liquidated damages under § 530.9(b)(8), or the occurrence of an event described in paragraph (c)(2) of this section.

(2) *Events not anticipated by the service contract.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper party has failed to tender the minimum quantity or portion required by the service contract:

(i) Further or continued implementation of the service contract is prohibited; and

(ii) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions as set forth in § 530.16.

§ 530.12 Filing fees and other costs.

(a) Under the authority of the Independent Offices Appropriation Act, 31 U.S.C 9701, the Commission assesses a filing fee for the filing of service contracts, modifications and corrections thereto. Unless otherwise provided in this part, checks, drafts or money orders shall be remitted and made payable to "Federal Maritime Commission" 800 N. Capitol Street, NW., Washington, DC 20573.

(b) Unless otherwise specified, overdue payments will be charged interest in accordance with the rate established by the Department of the Treasury for each 30-day period or portion thereof that the payment is overdue. In addition to any other remedy and penalty provided by law and regulation, if payment is overdue for 90 days the Commission may suspend or terminate electronic filing access.

(c) *Fees.* (1) *Service contracts and amendments.* The filing fee shall be \$1.63 per filing for all initial and amended service contract filings. Within 10 calendar days after the end of each month, the Office of Budget and Financial Management shall send a billing statement for each filer.

(2) *Filer registration.* \$91 for initial registration for one firm and one individual; and \$91 for additions and changes. No fee will be assessed to continue filer registration for organizations registered for batch filing with the Commission prior to May 1, 1999.

(3) *Filing Guide.* \$25 for diskette; \$49 for paper format. Requests for filing guides should be made in writing and addressed to: "BTCL Manuals," Federal Maritime Commission, Washington, DC 20753. A check for the appropriate amount should be made to the "Federal Maritime Commission."

(4) *Corrections.* \$233 for corrections to service contracts under § 530.11(c).

(5) *Software certification.* \$496 per test submission.

Subpart C-Publication of Essential Terms

§ 530.13 Publication.

(a) *Contents.* All authorized persons who have a duty to file service contracts under § 530.5 are also required to make available to the public,

contemporaneously with the filing of each service contract with the Commission, and in tariff format, a concise statement of the following essential terms

- (1) The port ranges
 - (i) Origin;
 - (ii) Destination;
- (2) The commodity or commodities involved;
- (3) The minimum volume or portion: and
- (4) the duration.

(b) *Method.* The statement of essential terms shall be published as a separate part in the filer's tariff publication, conforming to the format requirements set forth in 46 CFR part 520. Where there is more than one carrier party to the service contract each of the carrier parties to the service contract shall publish the essential terms in their individual tariff publication pursuant to 46 CFR part 520; except however, when the carrier parties comprise the full membership of a conference, publication shall be made in the conference tariff.

(c) *References.* The statement of essential terms shall contain the same number as &at for the confidentially filed service contract ("ET Number").

(d) *Terms.* (i) If any of the essential terms include figures for commodities exempt under the Act or moving outside of the United States trades, the statement of essential terms shall so note.

(2) If there are common carrier parties to the contract other than the carrier within whose tariff publication the essential terms appear, they shall be identified in the statement of essential terms.

(e) *Agents.* Common carriers, conferences, or agreements may use agents to meet their publication requirement under this part.

(f) *Location.* The Commission will publish on its website, www.fmc.gov, a listing of the locations of all service contract essential terms publications as defined in paragraph (e) of this section. The Commission will update this list on a periodic basis.

(g) *Updating statements of essential terms.* To ensure &at the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of most recent publication or revision. When the published statement of essential terms are affected by filed amendments pursuant to § 530.9 or corrections pursuant to § 530.11(c), the current terms shall be immediately changed and

published in the relevant statement of essential terms

(h) *Commission monitoring.* The Commission shall periodically monitor the publications of statements of essential terms to ensure that they conform to the corresponding filed terms.

Subpart D-Exceptions

§ 530.14 Exceptions.

(a) Except as provided in paragraphs (b)(1) and (b)(2) of this section, the Commission will not accept for filing service contracts which exclusively concern bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, as those terms are defined in section 3 of the Act or service contracts exempted under section 16 of the Act. Such service contracts transmitted to the Commission for filing under appendix A to this part shall be rejected and the filer shall be notified of the rejection.

(b) *Inclusion in service contracts.* An excepted commodity or exempted service listed in paragraph (a) of this section may be included in a service contract filed with the Commission, but only if:

- (1) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the excepted commodity; or
- (2) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(c) *Waiver of exemption.* Upon filing under this section, the service contract shall be subject to the same requirements as those for contracts involving non-excepted commodities

Subpart E-Rejection

§ 530.15 Contract non-acceptance, rejection and notice.

(a) *Non-acceptance.* The Commission shall not accept for filing any service contracts which relate exclusively to excepted commodities as described under § 530.14(a). The Commission shall immediately notify the filer of the non-acceptance.

(b) *Notice of intent to reject.* (1) Within 20 days after the initial filing of an initial or amended service contract, the Commission may reject, or notify the filing party of the Commission's intent to reject, a service contract that does not conform to the requirements of the 1984 Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(2) Except for rejection on the ground that the service contract or amendment

thereto was not filed before cargo moved under it, or other major deficiencies (such as no? containing terms required by § 530.9(b)(1)-(8)) the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit an appropriately modified contract.

§ 530.16 Implementation; prohibition and rerating.

(a) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day it is effective consistent with § 530.5, except for rejection under § 530.15;

(b) When the filing parties receive notice that an initial or amended service contract or statement of essential terms has been rejected under § 530.15:

(1) Further or continued implementation of the service contract is prohibited;

(2) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper within 5 days of the date of rejection; and

(3) Detailed notice shall be given to the Commission under § 530.10 within 10 days of:

(i) The rerating or other account adjustment resulting from rejection under this paragraph; or

(ii) Final settlement of the account adjusted under § 530.11.

(c) If the rejected service contract was that of an agreement with no common tariffs, the re-rating shall be in accordance with the published tariff rates of the carrier which actually transported the cargo which were in effect at the time the cargo was transported.

(d) Nothing in this section applies to service contracts unacceptable for filing with the Commission pursuant to § 530.15(a).

Subpart F—Recordkeeping and Audit

530.17 Recordkeeping and audit.

(a) *Records retention for five years.* Every common carrier or agreement shall maintain original signed service contracts, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each contract.

(b) (paragraph (b) is stayed until further notice.) Where maintained. (1) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of an agreement or President or Chief

Executive Officer of the carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (c) of this section.

(2) **Penalty.** If service contract records are not made available to the Commission as provided in paragraph (c) of this section, the Commission may cancel any carrier's or agreement's right to maintain records outside the United States pursuant to the certification procedure of paragraph (b) of this section.

(c) **Production for audit within 30 days of request.** Every carrier or agreement shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Economics and Agreements Analysis, submit copies of requested original service contracts or their associated records within 30 days of the date of the request.

(d) **Agreement service contracts.** In the case of service contracts made by agreements, the penalties for a failure to maintain records pursuant to this section shall be jointly and severally on all of the agreement members party to the service contract in question.

Appendix A—Instructions for the Filing of Service Contracts

Part I—Filing Guide

Service contract filing will be done in accordance with the instructions to service contract filers found in the **Service Contract Filing Guide** ("Filing Guide"). Filers may inspect a copy of the Filing Guide at the Commission's Bureau of Tariffs, Certification, and Licensing ("BTCL") (or its successor), 800 N. Capitol St., NW, Suite 940, Washington, DC. The Filing Guide may be purchased from BTCL for a fee specified in 46 CFR 530.12.

The Filing Guide includes the following items:

(a) **Transaction set.** The transaction set format includes all transaction set segments and segment definitions.

(b) **Data Element Dictionary ("DED").** The data element dictionary contains the definition of data elements (e.g., amendment number, date formats, etc.).

Part II—Filing

In all cases, the filing is processed as soon as possible after submission/receipt of the filing. The FMC's service contract filing system ("system") assigns the filing date, which is the date an electronically transmitted ("on-line batch") filing session file transfer is initiated, assuming there has been a successful file transfer. After the filing is processed, a filing-results message is placed in the filer's electronic mailbox on the central site system.

A **Procedure** Filing is performed by transmission of prepared service contract material to the FMC system over dial-up lines

from the filer's own computer, using Filing Guide service contract transaction set formats and the KERMIT or ZMODEM file transfer protocols. The conclusion of the file transfer sequence is a positive keyboard entry to initiate the transfer and a response that indicates completion of that submission. The modem must be v.34 compatible.

B. General format requirements

1. **Database format.** The FMC service contract database is structured from service contract data elements and the service contract terms formed by logical grouping of those elements.

2. **Transmission.** On-line batch transmission of service contracts to the FMC computer is governed by the transaction sets contained in the Filing Guide. Service contract filings not complying with the regulations in this part or the formats and valid codes contained in the Filing Guide are subject to rejection.

3. **Adding new transaction data.** Requests for major changes or additions to the transaction set format and/or data shall be submitted in writing to BTCL, with sufficient detail and reasons for each proposed change. A contact person and telephone number also should be provided in case of questions.

(a) A proposed major change (other than a correction), such as to a transaction set, will require formal configuration management procedures and a minimum of thirty days' advance notice of the change in the **Federal Register** and the "Service Contract System News", available at system log-on, and by other established Commission communications procedures.

(b) Minor changes will be entered into the system and published as soon as possible. Such minor changes include additions to any of the standard terminology published in appendix A to part 520.

C. Hardware and software requirements.

The basic equipment necessary to file service contracts is a personal computer ("PC"), a VT-100 emulation software package, and a modem. The transmitted filing session must be formatted to comply with the transaction sets. The transmission may be via the use of KERMIT or ZMODEM file transfer protocols after establishing a link for on-line batch filing with the FMC central site computer.

The Commission will not make available to the public software packages for firms to use in formulating service contract filings. The Commission has released the Filing Guide (with transaction set) into the public domain so that qualified commercial firms can develop filing software for the general market. Firms which develop filing software, must, by appointment through the Commission's Office of Information Resources Management and payment of the fee set forth in § 530.12, test their formatting of service contracts transaction set format by submission of that data to the FMC central site computer before they will be permitted to transmit any filings. The data must be submitted via on-line batch transmission over dial-up telecommunications links using the required file transfer protocols. Testing will require submission of sample service contract filings to the FMC system, with an evaluation of the actual results of the

attempted filings to ensure that the transaction set formats are properly employed and that the filing results are consistent with the filer's expectations. Organizations certified prior to May 1, 1999 for the batch filing of "Essential Terms Publications" ("ETs") in the Commission's former "Automated Tariff Filing Information System" ("ATFI") are not required to re-test their software but may if they so choose using the same procedure as for initial registrants.

D. Registration, Log-on ID and Password

1. System identifications ("IDs") for filing log-on and initial password are obtained by submitting the Service Contract Registration Form (Exhibit 1 to this part), along with the proper fee under § 530.12 and other necessary documents, including delegation of authority, as prescribed by this part, to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts with the FMC. However, each organization certified prior to May 1, 1999 to perform batch filing of ET publications in the Commission's former "ATFI" system, will be issued a new log-on ID and password for access to file service contracts.

2. Log-on IDs and passwords may not be shared with or loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on ID that is shared with, loaned to or used by parties other than the registrant.

3. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued.

E. Connecting to the Service Contract Filing System

If service contract filer equipment (hardware and software) is compatible with the configurations specified in this section and have been tested in accordance with Part II C. of this appendix, and the proper log-on ID and password have been obtained under this section, filing services are available to filers registered under this section, over commercial telecommunications using standard (v.34 compatible) asynchronous modems with data rates up to 28800 baud. The dial-up procedures are set forth in the Filing Guide.

F. Major menu selections.

Proposed connection will lead the filer to the "Logo Menu," which allows selections by any filer for "Organization Maint.," "Mailbox," "Service Contract System News," "Change Password," "Screen Setup," and "Logout." Additionally, a registered filer can access "Begin File Transfer" to initiate the on-line batch filing of a service contract. Upon the selection of "Begin File Transfer" the filer will be presented the option to select KERMIT or ZMODEM and to commence the file transfer.

G. Conformity checks

Certain service contract data submitted to the FMC for filing are screened for compliance with conformity checks, and certain data not automatically rejected by the conformity checks are flagged for

Commission examiner review The conformity checks are syntax checks, validity checks and associative checks. The system will generally not accept service contracts which fail conformity checks. Commercially developed batch filing software can be designed to accomplish the same functionality. However, all proposed filings of service contracts must undergo the routine system conformity checks before they can be received into the database. Filers will be notified of automatic rejections at this stage by electronic mail, with a follow-up letter if the electronic mail has not been read within 10 days of dispatch. The conformity checks are:

1. **Syntax Checks.** Service contracts will be checked for file integrity, proper data types, field lengths, and logical sequence according to the Filing Guide's transaction sets. Data not conforming to the data element format or type in the Filing Guide's DED and the sequence requirements of the transaction sets and segment definitions will result in rejections of submitted service contracts to include the possible rejection of an entire filing if form and format errors are extensive enough to preclude processing.

2. **Validity Checks.** Certain data elements of filed service contracts will also be checked for data validity by type against the DED's published reference tables, such as amendment codes, amendment numbers and valid dates.

3. **Associative Checks.** The system uses associative checks to identify logical conformity with established service contract filing rules. The following are some representative types of associative checks performed by the system:

- (a) Any initial service contract or amendment must have:
 - (i) A valid organization number.
 - (ii) No suspended carrier or object status.
 - (iii) Appropriate filing authority.
 - (iv) Filing date (system-assigned) equal to or less than the effective date.
 - (v) Valid and appropriate filing/amendment codes.
 - (vi) Valid and appropriate filing, effective, termination and expiration dates.
 - (vii) When used, valid special case number and filing/amendment code "S," with no other filing/amendment codes entered.
 - (viii) Each service contract must have a new (unique to carrier/conference/agreement) service contract number. The service contract number must be paired with a unique essential terms number and the pair must remain constant for all amendments and must be consistent between the filed service contracts and the published statement of essential terms.

H. Filing/amendment codes.

1. **Codes.** Filing/amendment codes must be valid Filing Guide codes and the effective, termination (if any) and expiration dates must match the corresponding dates published in the statement of essential terms.

2. **Multiple symbols.** Filed service contracts frequently can be coded with more than one symbol. Accordingly, the field, "Amendment Type," will allow up to three different, compatible symbols (Amendment codes and definitions are presented in the Filing Guide and the Standard Terminology Appendix to 46 CFR part 520).

1. Control dates and history

1. **Filing date.** The filing date is the date any service contract or amendment is processed by the system. Filers will have a filing date automatically assigned to all service contracts and amendments filed according to the start time of the file transfer, for file transfers that are successfully completed, U.S. Eastern Time Zone. Filers should plan the transmission of filing session files to allow for retransmission(s) starting during the same U.S. Eastern Time Zone date, in case the results of the initial transmission(s) are not successful.

2. **Effective date.** The effective date is the date upon which a service contract or amendment is scheduled to go into effect by the filer. Specifically, a service contract or amendment becomes effective at 12:01 a.m. on the beginning of the effective date. The effective date of the corresponding statement of essential terms cannot be prior to the filing date of the service contract or amendment with the Commission.

3. **Expiration date.** The expiration date is the last day, after which the entire service contract is no longer in effect.

Part III—Organization Record and Register

A. **Organization Record.** The organization record is the master record for all service contract information in the system for a specific firm. Upon Commission acceptance of registration, a "shell" organization record, specific to the requestor, is established and contains the organization number, organization name and organization type. The firm's authorized representative can then access the newly established organization record, using the special access log-on ID and password to file the address for the firm's home office, and complete the affiliations, d/b/a, and publisher lists as appropriate. To maximize security of the data, maintenance (editing) of the organization record will be permitted only to the individual in the firm holding the special access log-on ID and password for organization record maintenance.

B. **Service Contract Register.** Each organization must create a service contract register ("register") prior to the filing of any service contracts or amendments thereto (and including "general rules" filings). The register is a directory subordinate to which service contracts and their amendments are filed. Each organization may create more than one register (e.g., according to location groups). Each register must include a record reflecting the filer's name, organization number and status (e.g. ocean common carrier/conference) which identifies the filer. At the option of the filer, the register may also include the filer's service contract rules, i.e. the stated terms and conditions set by the carrier, agreement, or conference party to a service contract which govern the application of service contract rates, charges and other matters.

Part IV—Service Contracts

As required by § 53C.9, each service contract filed with the Commission shall include the following:

A. **Service Contract Title.** The filer's title of the service contract (generally descriptive of the commodity and/or service)

B. **SC Number (Service contract number).** The "SC Number" is defined by the filer and shall be entered in the appropriate field.

C. **ET Number (statement of essential terms number).** The "ET Number" is defined by the filer and shall be entered in the appropriate field (Note: Service contracts must have a new (unique to carrier/conference/agreement) service contract number for the initial filing. The service contract number must be paired with a unique essential terms number and the pair must remain constant for all amendments and must be consistent between the filed service contracts and the published essential terms documents.)

D. **Amendment Number.** Where feasible, service contracts should be amended by amending only the affected specific term(s) or subterms. Each time any part of a service contract is amended, the filer shall assign a consecutive amendment number (up to three digits), beginning with the number "1." (The amendment number field must be "0" or void for the initial filing). Each time any part of the service contract is amended, the "Filing Date" will be the date of filing of the amendment.

E. **FMC File Number.** The FMC File Numbers will be system-assigned as initial service contract filings are received and processed. The FMC File Numbers will be assigned sequentially and will start at a number designated by the FMC. The FMC File Number will be provided to filers in the acknowledgment message (via electronic mail) for filings.

F. **Effective Date.** The service contract must indicate the effective date and the expiration date governing the duration of the contract. The duration must also be set forth in Term No. 8 where the duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date).

G. **Amendment Codes.** All amendment codes listed in the Filing Guide, except "C" and "S", may be used in any combination, with up to three amendment codes for amendments.

H. **Special case symbol and number.** The "S" amendment code must be used singly, and in conjunction with a validated special case number for corrections to service contracts.

I. **Filing Date.** The filing date is automatically set by the system whenever a service contract or amendment thereto is filed.

J. **Contract terms ("terms").** Terms Nos. 1 to 11 shall address the subjects and bear the terms' titles for the respective numbers exactly as provided in this section. (Note: If a subject is not included, such as No. 12, the number must be listed with the appropriate title and the designation "NA." All terms may be subdivided into subterms to facilitate amendment.)

1. **Origin (No. 1).** "Origin" includes the origin port range(s) in the case of port-to-port movements, and be origin geographic area(s) in the case of through inter-modal movements, except that the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic

the actual locations agreed to by the contract parties. Service contracts shall only employ locations (points) that are valid, published locations in the National Imagery and Mapping Agency ("NIMA") gazetteer and ports published or approved for publication in the World Port Index (Pub. No. 150).

2. **Destination** (No. 2). "Destination" includes the destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. Service contracts shall employ only locations (points) that are valid, published locations in the National Imagery and Mapping Agency ("NIMA") gazetteer and ports published or approved for publication in the World Port Index (Pub. No. 150).

3. **Commodities** (No. 3). Term No. 3 shall include commodities covered by the service contract. For each commodity filed in this term, a separate formatted commodity index entry is required. To the maximum extent possible, service contracts should use the U.S. Harmonized Tariff Schedule ("US HTS") for commodity coding and associated terminology.

4. **Minimum quantity or portion** (No. 4). Term No. 4 shall address the minimum quantity or portion of cargo and/or amount of freight revenue

necessary to obtain the rate or rate schedule(s). The minimum quantity or cargo committed by the shipper may be expressed as a fixed percentage of the shipper's cargo.

5. **Service commitments** (No. 5). Term No. 5 shall address the service commitments of the carrier, conference or specific members of a conference, agreement or specific members of an agreement, such as assured space, transit time, port rotation or similar service features.

6. **Rates or rate schedule(s)** (No. 6). Term No. 6 shall contain the contract rates or rate schedules, including any additional or other charges (e.g., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges.

7. **Liquidated damages for non-performance, if any** (No. 7). Term No. 7 shall include liquidated damages for non-performance, if there is such provided for in the service contract.

8. **Duration of the contract** (No. 8). The duration of the contract shall be stated as a specific, fixed time period, with a beginning date (effective date) and ending date (expiration date).

9. **Signature date, contract parties, signatories and affiliates, if any** (No. 9). The identification of contract parties must be included as follows:

(a) the legal names and business addresses of the contract parties. (Note: if the service contract is entered into by an agreement or conference, this shall include the

corresponding agreement number on file with the Commission).

(b) the legal names, titles, and addresses of representatives signing the contract for the parties and the date the contract was signed, and

(c) the legal name(s) and business address(es) of affiliates entitled to access the contract, if any. Subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association, etc.") (Note: This term must name every affiliate of each contract party named under § 530.9(d)(4) entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by all of the parties of a conference, agreement or shippers' association, individual members need not be named unless the contract includes or excludes specific members.)

10. **Shipper's Status Certification and Affiliates, if any** (No. 10). The shipper signatory(ies) must certify its status and that of any affiliates in accordance with § 530.7 of this part.

11. **Records** (No. 11). Term No. 11 must contain:

(a) A description of the shipment records which will be maintained to support the contract; and

(b) The address, title, and telephone number of the person who will respond to a request by making the original signed service contract and shipment records available to the Commission for Inspection under § 530.17 of this part.

12. **Other Provisions of the Contract** (No. 100-999). Any term of a service contract not otherwise specifically provided for in this section shall be entered after the above terms and in numerical order, beginning with No. 100.

BILLING CODE 6730-01-P

EXHIBIT 1 -- SERVICE CONTRACT REGISTRATION [FORM FMC-83]

ORGANIZATION NO _____

PLEASE TYPE OR PRINT
SERVICE CONTRACT REGISTRATION

(SEE ATTACHED INSTRUCTIONS)

1. This Registration is: ☐ Initial ☐ Amendment (Specify change) _____

2. Registrant

Full Legal Name of firm (or individual, if not a firm)

(Doing Business As)

3. Address of
Home Office

(Number and Street)

Telephone

(Number and Street)

Fax

(City/State/Country)

(Federal TIN Number)

E-Mail (optional)

4. Billing
Address If
Different

(Number and Street)

Telephone

(Number and Street)

Fax

(City/State/Country)

E-Mail (optional)

5. Organization Number (if known) _____

6. Registrant Type ☐ VOCC ☐ Tariff Publisher/Agent/Other
(Check one) ☐ Agreement ☐ Conference/Joint Service

7. Permissions Requested and Person granted these permissions (Check permissions that apply)

Full Legal Name

☐ Maintenance of organization record☐ File Service Contracts

Registered for Batch Filing Prior to May 1, 1999? (Y/N) ____ If Yes, show date ____
If the person to perform the filing already has an existing Log-on, list only the Log-on for that person.

Existing Log-on _____

Signature of Authorized Official

Print or Type name of Authorized Official

date

FMC USE ONLY

Logon _____ Initial Password _____

ID _____

Directory _____

Date Asg _____ / _____ / _____ Asg By _____

12/98

Exhibit 1—Instructions for Service Contract Registration [Form FMC-831]*Instructions*

Line 1 Registration Indicate whether this is the initial (first time) registration or an amendment to an existing Service Contract Registration

Line 2 Registrant This must be the full legal name of the firm or individual registering for the FMC's Service Contract Filing System and any trade names. The registrant name should match the corporate charter or business license, conference membership, etc. It should be noted that the registrant name cannot be changed by the registrant after the registration without submission of an amended registration fee.

Line 3. Address of Home Office. The complete street address should be shown in addition to the post office box. Also, provide the registrant's Federal Taxpayer Identification Number ("TIN" Number)

Line 4 Billing Address if Different This should be completed if the billing address differs from the home office address. Show the firm name (if different from the registrant), street address and post office box (if applicable)

Line 5 Organization Number Complete if known (Regulated Persons Index or "RPI" number)

Line 6 Registrant Type Indicate the type of organization. A registrant cannot be more than one type. This data cannot be changed by the registrant after registration without submission of an amended registration form

Line 7 Permissions Requested and Person Granted These Permissions

Maintenance of Organization Record—The person listed in line 8 is authorized to access the organization maintenance functions (i.e., modify organization information, assign publishers, affiliations, and d/b/as).

Service Contract Filing—The person listed in line 8 is authorized only to submit filings.

Line 8 Certified for Batch Filing Indicate whether the registrant was registered with software certified to perform batch filings prior to May 1, 1999. Otherwise, the registrant must first be certified for batch filing as outlined in 46 CFR part 530. After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing log-on, the log-on (not the password) should be listed on the requesting form. Also, the certification date received from the FMC should be listed on the requesting form

By the Commission.

Joseph C. Polking,

Secretary

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